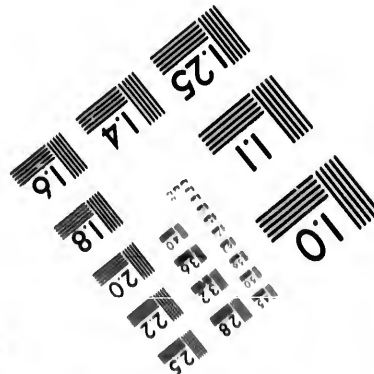


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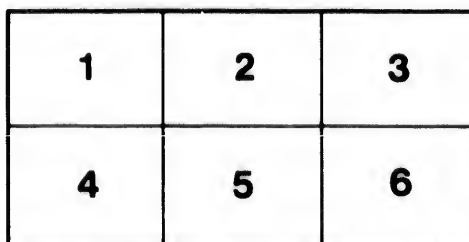
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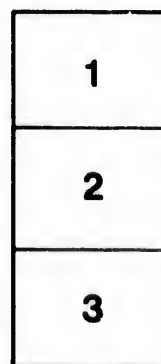
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ORDERS IN COUNCIL,

OR AN

EXAMINATION

OF THE

JUSTICE, LEGALITY, AND POLICY

OF THE

NEW SYSTEM

OF

COMMERCIAL REGULATIONS,

WITH AN

Appendix

OF

State Papers, Statutes, and Authorities.

LONDON:

PRINTED FOR LONGMAN, HURST, REES, AND ORME,
PATERNOSTER ROW,

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1808. . .

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EXAMINATION
OF THE
ORDERS IN COUNCIL.

IT may be premised, that the enemy, and those powers under his control, or who take his part, have no right to interfere in this discussion. This title is confined exclusively to two parties—the neutrals, and the people of these realms. The former have a right to demand whether our late proceedings are justified by the law of nations; the latter are entitled to ask if those proceedings are consistent with the municipal law of England. They have a further right to demand if they shall be injured or benefited by this new system. These three questions it is proposed to examine in their order.

I. Are the late Orders consistent with the law of nations ?

As no man can pretend that England has a right to seize neutral ships, unless they are found carrying contraband of war, or attempting to violate an *actual* blockade, the defenders of the Orders have the burden of the proof; and they must shew that there was a just cause, for attacking in this manner the undoubted rights of neutral nations. The only cause which can be assigned, is that France had previously done the same, and that neutrals acquiesced in it; therefore we are justified in retaliating upon France. This is however quite inconsistent with fact. France, by a decree, Nov. 21, 1806, declared generally, "that the British isles are in a state of blockade;" with several particular clauses, explaining what sort of blockade this was to be *. The *seventh* clause alone prohibits intercourse between England and neutrals; and that, only by ordering that no vessel from an English port, shall enter a French port. It does not even declare such vessel, if actually within a French port, to be seizeable. General Armstrong, the American minister at Paris, demanded, if the decree subjected to capture, neutral vessels found at

* See Appendix.

sea, on their voyage to, or from England? In short, he asked whether the term *blockade*, in the first article of the decree, was used in its ordinary sense? The answer of M. Décrès, the minister of marine, (dated Dec. 24.) was, that the decree *did not* subject such ships to seizure; and that nothing in the decree was intended to infringe on the rights of neutrals, as either established by treaties, or by the common law of nations*. In other words, the decree, as so explained, only prohibited neutral vessels from entering a French port after having cleared out at an English one. This prohibition is strictly consistent with the law of nations. It is infinitely more so than our rule of the war 1756; it is exactly in the nature of our Navigation Act. The explanation was acted upon at least down to last September, when an American vessel being captured, was released by the French courts in virtue of it. Some persons deny that it ever was departed from; but all are agreed, that time was not given for America to acquiesce or resist. In October, say some people; France condemned Americans taken in the voyage to and from England. If so, the same persons admit that America would probably have resented this

* See Appendix.

breach of the law of nations. At any rate, long before it could be known that the intelligence of this illegal proceeding had been received in America, our orders are issued. Now upon America, we had no right to retaliate, until she should fully acquiesce in the new and confessedly illegal conduct of France.

Indeed it cannot be pretended that the orders were issued in consequence of the French Government, acting upon a new construction of their decree; for it is perfectly well known that the report of this change of conduct had not reached England on the *eleventh of November*, nor until some days after the orders were published; and we are greatly misinformed if any of the King's Ministers, in conferences with the mercantile bodies who addressed them on the subject, ever hinted at the report alluded to, or cited, in justification of their measures, any thing further than the words of the original decree, as explained by themselves. They knew of no variation, or alleged variation, in the conduct of the enemy with respect to that decree, until after the orders were passed and promulgated. Far, therefore, from giving the *neutrals* time to acquiesce or resist, our government proceeded to retaliate before they themselves knew that

the *enemy* had in the smallest degree deviated from the strict law of nations.

But admitting that America should, (contrary to all probability) have acquiesced in the decree of November 21, 1806:—The French blockade consisted of two parts, according to the explanation of it, for which the defenders of our orders contend,—a seizure of neutrals entering French ports, after clearing out from English ports,—and a seizure of neutrals on the voyage to or from England. The former part France could execute; but she had a perfect right to do so by the law of nations. The latter part she could not enforce, in any but the most trifling degree; and, though illegal, it was sure to become nugatory. Therefore, even if America had acquiesced in it, she would only have received an insult, which could injure herself but little, and England not at all. We have no right whatever to retaliate upon a neutral for suffering himself to be affronted, or for putting up with even an injury, unless that injury either benefits our enemy or hurts ourselves. This is involved in the very meaning of the neutral and belligerent relations.

Further, our own rule of the war 1756, justifies the greater part of the French decree, admitting the explanation contended for. The

trade which Americans (for example,) carry on between almost all the belligerent countries and England is, during peace, illegal. By the navigation act, they may export English goods to those countries ; but they cannot import their goods from thence. At the commencement of the war an act is passed authorizing the King to suspend this part of the navigation law, (43. Geo. III. c. 153.) Therefore, according to the rule 1756, this trade of the Americans may be stopped by France without any illegality, and should the Americans yield, still we have no right to complain.

If we had any title to retaliate in the manner contended for, it could only be founded upon the right of annoying our enemy, or preventing the neutrals from assisting him. Therefore, it is utterly repugnant to the law of nations, to prevent the neutrals from trading directly with France, and then to allow them to trade from this country to France. We may blockade France if she has blockaded us, and neutrals have acquiesced ; but we cannot force the Americans to trade with France through this country, merely because they have ceased to trade with this country at the requisition of France. The utmost we can demand is that they should suffer as much from us, as they bear from our

enemies, and in the same way. We may retaliate blockade for blockade, but not monopoly for blockade, or tribute and perquisite for blockade. This would be exacting not a "tooth for a tooth," but "an eye for a tooth." Still more unjustifiable by the law of nations, are our detailed arrangements, especially those respecting *licences*, and the gains arising from, and the undue preferences involved in them.

The third order in Council, (Nov. 11.) declares the sale of an enemy's ships to a neutral, to be illegal. The reasons assigned are, that France considers such a compact as illegal, and that she has covered her vessels by transferences of this kind. It is evident that the latter of these is the only reason for our order, and it must be remarked that this is a practice adopted by England as far back as the beginning of last war.—The stat. 34 Geo. III c. 68. s. 22. enacts that British registered ships sold to foreigners, shall retain the privileges of British ships, (i. e. the monopoly established by the navigation law) provided they are registered anew within a certain time, and lays down a variety of rules whereby this transaction may conveniently be carried on.

The illegality of the last article of the first order, declaring all neutrals good prize which

carry *Certificates of origin*, is manifest.—The neutrals continue trading in our goods with some of their ships; and avoid seizure by France as well as they can, admitting that she enforces an illegal regulation; but such ships as they fit out without any British goods on board, are surely entitled to carry a certificate of this fact, if they and their government please. Because France takes, or rather idly threatens to take, the ships laden with our goods, shall we be acting in retaliation by taking the ships that are laden with other goods, and endeavour in their papers to substantiate this truth? It would be retaliation, to take ships laden with French goods, and to require that all neutrals should carry *Certificates* of their cargoes not being so composed. It is no retaliation to take ships laden with neutral goods, or with British goods, because they yield to the French regulation, and carry *Certificates*, unless, indeed, the *falsehood* of such certificates in the latter case may furnish any argument, which it can only do to the enemy, not to us. In a word, if we have any right to retaliate on America for acquiescing in the French measures, we must confine our retaliation to precisely similar measures. We can

only ask the neutral to bear from us what he has borne from our enemy.

The Order in Council, January 7, 1807, is justified by the rule of the war 1756, of which it is scarcely an extension.

The countries under the enemy's dominion, or in alliance with him, are there considered as enemy's territory; and the trade from one port to another of those different countries, as a coasting trade. The principle of the rule 1756 is, that you have a right to prevent a neutral from interfering with your just hostility, and stepping in between your naval force and your enemy's trade, for the purpose of screening it. The neutral screens most effectually the trade carried on between Holland and France, for example, if he engages his shipping in it, at a time when not a belligerent vessel can show itself upon the sea between those two countries. There may not have been any express law in either state during peace, to prevent third parties from carrying on this commerce; but in point of fact, it must always have happened, that by far the greater part of the traffic between nations so circumstanced, was carried on by their own vessels antecedent to the war; and the spirit of the rule 1756, is to prevent the enemy from benefiting by

a great and sudden change of system, which shall throw his commerce, while the war lasts, under the cover of the neutral flag. It may, however, be remarked, that the rule applies to almost all maritime states, still more closely. There are very few if any commercial countries in Europe, which have not adopted the principles of the English navigation law, and excluded as much as possible, from their carrying trade, the vessels of all foreign nations. We do not by any means contend for the rule 1756; but if that rule is to be laid down at all, it clearly justifies the Order January 7th, 1807.

On the principle of retaliation, indeed; recited in the preamble, it cannot be justified with respect to America; for it was issued before her acquiescence in the French decree could be known. But as the English government had a right antecedently to that decree, to issue this order, the intention of retaliating is only stated as the motive which induced the government to exercise a just right, formerly abstained from. Let it be observed too, that the nations under the influence of France, to whom the order applies, had in some sort identified themselves with her, by closely following her commands in all things—nay, suffering her constantly to interfere with their municipal laws

respecting trade. A French proclamation was good law to plead in Hamburgh and Holland, Italy and Spain. Those countries immediately adopted the decree of November 21 as their own; they were, in truth, excepting Spain, all filled with French troops, and in the habitual practice of receiving orders from Paris, through from a French commander or ambassador, as the provinces of Great Britain do from the seat of government *.

It is not foreign to the purpose to add, that the principle of considering all ports under the enemy's power, as ports of the same country, has a precedent in the stat. 22, Geo. III. c. 78, which considers all the countries under the same sovereign, as the same country *quoad* the regulations of the Navigation Act.

II. Are the late orders in council consistent with the municipal law, and constitution of the realm?

It is an undoubted maxim of our constitution, that the traffic of the subject cannot be restrained by act of parliament. According to Lord Coke, freedom of trade is the birth-right of Englishmen. And it is evident, from our best authorities, that the right of interfering with commerce, sometimes exer-

* See Appendix,

eised, and in bad times pretty generally claimed by the crown, is now utterly obsolete, and contrary to the modern form of the constitution.

The writ *ne exeat regnum*, was expressly described by Lord Chancellor Talbot in 1734, as obsolete, at least in its original acceptation of a state writ (3. P. Williams 312). The 5 Ric. II. C. 2. prohibiting all but the grantees of the realm, soldiers and *merchants*, from going abroad without licence, was repealed by 4 Jac. I. c. 1. If the former statute was not quite useless, the latter must have taken away a prerogative then first granted the crown, and which at any rate never extended to merchants. Moreover the writ *ne exeat regnum*, was applied specifically to an individual, and was not in the nature of a proclamation or edict, addressed to the whole or a class of the community. Lord C. J. Hale (*De portibus maris*, P. II. c. 8.) lays it down that all orders of this sort, if issued by the crown, must be in times of extraordinary danger, and *pro hac vice*. By *magna charta*, cap. 30, no merchants, whether natives or foreigners, can be restrained from entering or leaving the realm, "*nisi publice antea pro-*

hibiti," and Coke interprets *publica* to mean by *statute*, (ii Inst. 57.)

Besides the 30th chapter of *magna charta*, various statutes have been passed at different times in favour of *merchant-strangers*, and securing their privileges, as well as those of English merchants. By 27 *Ed. III. Stat. 2. c. 2.* and 27 *Ed. III. c. 2. (statute of the staple)* all merchants, except enemies, may come safely into England with their goods and merchandise, and dwell there and return thence. By 5 *Ric. II. stat. 2. c. 1. merchant-strangers* are allowed to enter and depart from the realm at pleasure, and during their stay are to be friendly entertained; and by 5 *Hen. IV. c. 7.* alien-merchants are put on the same footing here, with denizens in foreign kingdoms.

Various penalties have been attached to the offences of disturbing merchant-strangers residing in the realm, by 9 *Ed. III. 1. 2 Ric. II. c. 1. 11 Ric. II. c. 7. 25 Ed. III. c. 1.* and many others. By the first mentioned statute, if the magistrates of a borough refuse to give the foreign trader redress when demanded, the franchise of the place is forfeited to the King. Even alien-enemies resident as merchants, are favourably treated by our older

law. By *Magna Charta*, c. 30, they are to be secured in a kindly manner until it be seen how their sovereign treats the King's subjects residing in his dominions; and by 27 Ed. III. st. 2. c. 17. they are allowed forty days or longer after the breaking out of a war, to settle their affairs and depart.

The crown has frequently attempted to prevent, or otherwise regulate importation, by its own authority; but Hale observes that such proclamations were never effectual, and at any rate could lead to no forfeitures (*De Port. Mar. pt. II. c. 8 and 9.*) The authority of Lord Coke is equally direct on this point, and not surely the less strong for the case which he cites in illustrating his opinion. Letters patent had been granted by the crown in the reign of Philip and Mary, prohibiting the importation of certain wines *by foreign merchants*, into any English port except that of Southampton. This prohibition being broken through by some foreigners, the Attorney General proceeded against them in the Exchequer by information; and the case being argued in the Exchequer-chamber, all the judges gave an unanimous judgment for the defendants, their opinion being clear "that the graunt made in restraint of landing the said wines is a restraint of the liberties

of the subject, and against the laws and statutes of this realme." (1 Inst. 61.) Will it be pretended in the reign of Geo. III. that the crown can prescribe what merchant strangers are to do in this realm, when the Judges of Philip and Mary, all in one voice, declared that it could not lawfully prevent them from coming here, or oblige them to trade in one port rather than in another? Will it be maintained, that because the crown may declare war against a foreign prince, and make his subjects alien-enemies, therefore it may, without declaring war, impose restraints upon their conduct within the realm, when we see that it has no power whatever of preventing those subjects from trading in all parts of the realm, so long as peace subsists with their sovereign?

Prohibitions of exportation have also been often attempted by proclamation, chiefly in the case of arms during war, and corn during war or famine; but Hale says, that even in times of danger they were not much relied on. (*De Port. Mar. pt. II. c. 8*) Edward III. in the 41st year of his reign, attempted by proclamation to restrict exportation to English bottoms; but this was found ineffectual, says Hale, until statutes were passed, viz. 5 Ric. II. c. 3. and

6 Ric. II. c. 8. 14 Ric. II. c. 6. and 4 Hen. VII. c. 10. (which was repealed by 1 Elizabeth I. c. 15. and other provisions added,) as also by 5 Eliz. c. 5. and 13 Eliz. c. 15. but the navigation act finally, according to Hale, proved effectual. This eminent lawyer concludes that the maxim, "*que la mere soit ouverte,*" (see 18 Edward III. c. 3.) is the ancient principle of our constitution, and that the ports can only be shut either against the trade of natives or of foreigners at amity with the crown, by statute.

The opinions of other lawyers, and the practice of the constitution in later times, has been precisely consonant with this principle. In admitting of the power of the crown to lay an embargo, Lord C. J. Holt adds that it must be upon great emergencies. The authorities cited for this power in the arguments of Mr. Hampden's counsel go only to prove its existence "in time of war and imminent danger" (1 *State Trials*, 540) meaning evidently not merely a state of warfare in general, but some specific and temporary object of the war, as an expedition, rebellion in the country, &c. So in the Case of Impositions, cited for the same purpose, Mr. Hake-will, who states the power most widely,

speaks of "*a short time*," and instances, as an emergency which would give the power, the "want of shipping upon some sudden attempts;" while Mr. Yelverton denies that since the time of Edward III. any authority, except that of Parliament, can, except for the moment, and in a very extraordinary emergency, affect the trade of the realm (*2. St. Tr.* p. 504). Even in the apprehension of a famine in 1766, an order in council to restrain the exportation of grain was, *in opposition to the Ministry of the day* (Lords Chatham, Camden, &c.) declared by Parliament to be illegal, and to require a bill of indemnity. If it should be said that this was in time of peace, we must recollect that, under a similar alarm of famine in 1709, the Queen only issued a proclamation for enforcing the laws against forestalling, and told the Parliament in her speech that *she had done all she legally could do*; and in 1756, during a war not very remarkable for the forbearance of England towards the rights of neutrals, the rights of the people at least, and the municipal laws of the realm were better respected; for the example of 1709 was followed, and no apprehensions of famine could

induce Lord Hardwicke to issue a proclamation affecting the corn trade.

Thus, from the earliest times, [the tenderness of the English Constitution, for the trading interests of this country, is remarkably exemplified. They are regarded with more peculiar favour than almost any other subject of legislation. Even in ages when their magnitude was but inconsiderable, every measure appears to have been taken which might promise to cherish or promote them. To say that these endeavours were often fruitless, and very often hurtful in their effects, is only to make in this instance an observation suggested by the history of all public transactions; and to regret that, as governments often display less virtue than prudence, so their intentions are sometimes better than their abilities. The efforts of our ancestors may frequently have been injudicious, but their desire was always the same—to promote the commerce of these realms. In pursuing this object, they seem not to have cared how much they encroached upon the power of the crown, or how little they humoured the prejudices of the people. It is not unworthy of our observation, that, in many respects, their anxiety for

encouraging at once both trade and civil liberty, led them to more liberal views of policy than have always marked the commercial legislation of later times. Even in the present day, a man might incur the fashionable imputations of "*not being truly British*," or of "*indulging in modern philosophy*," who should inculcate the very maxims handed down from the Barons of King John and his successor. And persons whose knowledge of the English history goes no farther back than the French Revolution, or who have only studied the Constitution in the war of words, which it has excited, would probably make an outcry about "*the wisdom of our ancestors*," if one were disposed to repeat some liberal doctrines, ancient even at the date of Magna Charta. If by some of the laws already cited, traders are placed on the footing with nobles, and the great baron's independence of the king's prerogative, shared with the merchant; if by a multitude of others, foreigners at amity with the realm are protected and highly favoured; if within the period of our written law certain rights and privileges are secured to alien enemies themselves, and they are in some degree secured from the absolute control of the crown--

—what will the thoughtless persons alluded to think, should it appear that in the remotest times to which the history of our law reaches, and before the men were born who obtained the great charter of our liberties, all the warlike spirit of the day—all the inveterate hatreds of a military people towards the enemy, and their contempt for peaceful industry, did not prevent them from extending to the persons of hostile merchants the same protection, in the midst of warlike operations, which the sanctity of their functions secured to the priests? It was in those remote times held to be a duty incumbent on all warriors to spare the persons of enemies within the realm, if they happened to be either priests, husbandmen, or merchants; or as their rude verses expressed it (in a style which some of our wise and classical statesmen may now-a-days deride.)

*Clericus, Agricola, Mercator, tempore belli,
Ut ovetque, colat, commutet pace fruatur.*

Nor let it be thought mere matter of curiosity or recreation to indulge, upon the present occasion, in such retrospects as these. The remarkable facts which have been stated deserve our most serious attention, as descriptive of the liberal and politic spirit of the Constitution from its most ancient times.

They prove that at least a prescriptive title cannot be shewn for the narrow-minded views which the little men of this day entertain. They shew that our ancestors held the rights of the people so sacred, and as intimately connected with those rights, the great interests of trade, that they would in no wise compromise them, either to gratify a spirit of national rivalry, or to exalt the powers of the crown, or to humour the caprice of the aristocracy. For it is a mere epigram to say, as Montesquieu hath done, in allusion to Magna Charta, "that the English alone have made the rights of foreign merchants a condition of national freedom." Our ancestors favoured and protected foreign merchants, out of respect to the interests and liberties of England. They knew that no more deadly blow could be aimed at the merchants and people of these realms, than by allowing them an exclusive possession of freedom, while their foreign customers should be placed at the disposal of the Prince. They saw the impossibility of long preserving any such limited system of popular rights, and they saw too, that commerce being in its nature a mutual benefit, the power of the crown would triumph over the prosperity of the people, as well as over their liberties, the

moment that the protection of the Constitution was withdrawn from the merchant-stranger. For this reason it was, that the wise laws which we have cited were continually passed and acted upon in a long, uninterrupted series, from the time when they arose out of those early traditional maxims of our Norman ancestors, down to the reign of Philip and Mary, when the judges, according to their true spirit, declared that the *rights of English subjects* were attacked by injuries offered to *foreign merchants*.

It is quite manifest, therefore, that the free traffic of merchants, as well foreigners as natives, in our ports, is secured to them by law, and cannot be affected by any royal edicts. The King may go to war with a foreign nation, and then he has a right to do that which a state of war authorizes. But while peace subsists, the merchant-stranger in our ports is as much under the protection of the law, and as well secured against the acts of the executive, as any subject of the realm. Unless the law prohibits the exportation of certain goods by neutrals, or the sailing of neutrals to certain ports, they have a right to export and to sail as much as if they were liege subjects. Unless the law establishes

regulations for their dealings, they may deal freely like natives, and no royal proclamation can interfere with them in any manner of way. The crown might with the very same reason levy a tax on foreigners residing within the realm, and plead in excuse that it has the power of making war on their nation, treating them as alien-enemies, and thus forcing them either to pay the tax or leave the country.

In defiance of these clear principles, and in direct violation of law, the late orders, among other things, have proclaimed the following restrictions upon trade.

Three first orders, Nov. 11, 1807.

(1.) By the *first* order, neutrals must have cleared out from British ports (as well as allied ones) for the blockaded countries under certain regulations, otherwise they are liable to be captured on the voyage. This is as complete a restriction as if they were forced, while in the ports of the realm, to clear out in a certain manner. The Sovereign is entrusted with the naval forces for lawful purposes; not surely to cruize against such of his subjects as are proceeding on lawful

voyages, nor (for the same reasons) to cruise against foreigners who have left his ports in a lawful way.

(2.) By the *second* order, certain articles, as brandy, sugar, wine, &c. imported in neutral vessels can only be re-exported in the same vessels, under licence from the crown. The general objection applies here. Moreover, how can any person be legally stopped in his attempts to export contrary to this order? And how can the prohibited goods be seized or forfeited?

(3.) Certificates of origin may be found on board of vessels in the ports of the realm: therefore, the *first* order authorizes the evidently illegal act of seizing in a British port, a friendly vessel carrying neutral or British property.

Six additional orders, Nov. 25, 1807.

(1.) By the *second* additional order, a licence from the crown must be obtained before a neutral ship can clear out from a British port, to an enemy's colony with foreign produce.

(2.) By the same Order, paragraph 2, a licence is required before a neutral can clear out

with certain articles, viz. foreign sugar, coffee, wine, cotton, &c. to any part of the world, hostile or friendly; nay strictly interpreted, to Malta or Gibraltar.

(3.) By the same paragraph, no vessel (meaning probably no neutral vessel) can clear out from this kingdom, to any part of the world, with the cargoes of foreign hostile produce, which she had previously imported, without first entering and landing the same. Thus an American having imported French wine from Gottenburgh, may be prevented, by this royal edict, from sailing with it to New York, unless she stops to enter and land it! Upon this and every other part of these enactments, it may be remarked, that if the crown has the power to make them, the Navigation Act was nugatory. Its place might have been most adequately supplied by an Order in Council; yet observe what Lord C. J. Hale says on this subject above.

(4.) By the 3d paragraph of the same Order, no vessel (meaning probably no neutral vessel) can clear out from Guernsey, Jersey, or Man, with any articles imported from the blockaded country, except to some British port; nor can any such cargoes enter there, except from a British port. So that these islands in respect of all such articles are plac-

ed in a state of blockade, nearly as rigorous as if they were enemy's territory.

Every one of these provisions in the late orders, militates most directly against the whole spirit of the Constitution as described in the laws of the realm, and the opinions of eminent writers formerly detailed. The Constitution says, merchants, as well strangers as natural subjects, shall be protected, encouraged, by all means induced to trade and settle in these realms; they shall enjoy full freedom of trade and security in all their transactions; while they are on British ground, their rights shall only be touched by the law of the land. The Orders in Council say, Foreign merchants are as nothing in the eye of the law—they are at the mercy of the crown—they can only trade in our ports as the King pleases—they must conform in every particular to his will—in the ports of the realm, they alone, of all the inhabitants, may be prevented from sending out what vessels, and what cargoes they please, or of sailing to what foreign ports. The Constitution says, it is the privilege of English subjects to trade in English ports, with merchant strangers, the subjects of powers at amity, freely, without let or hindrance; it is the privilege of Englishmen, that free trade be car-

ried on at all times by all friendly strangers, carrying both to and from our ports whatever may lawfully be dealt in, and on whatever destination. The late Royal Edicts say, all neutral trade in English ports is under the control of the Sovereign not of the law—he may impose upon it such restrictions and regulations as he pleases. But some of the regulations imposed by the Orders are still more directly unconstitutional. Foreign vessels are not allowed to proceed as they may think proper on their voyages, but are liable to such detention as the servants of the crown may think fit to prescribe. Licences are required for certain voyages; those licences may be granted upon payment of certain fees; that is, for certain sums of money—or, they may be refused altogether, and the vessels detained until Parliament shall impose certain duties upon exportation. In the former case, a direct tribute is levied by the Crown upon a large proportion of the trading interest, without authority of Parliament. In the latter case, the Crown of itself takes the first step towards raising an unauthorised tax. The illegality of extorting money for licences is clear and indubitable. It is not excused by the late frequency of the practice. When the King has declared war

upon a foreign nation, it is the duty of all his subjects to refrain from intercourse with the enemy; such intercourse is unlawful, and it is the duty of the Sovereign to prevent it. If he grants to some of his subjects a licence to do that which he prevents the rest from doing, and exacts money for this preference, does he not levy a tribute, properly speaking, upon those who continue dutifully to abstain from this irregular traffic? They are prevented from trading with the enemy, and others for a certain sum, profit by the monopoly of a trade, which either should be wholly prohibited, or wholly free: those others can afford to pay this sum, because of the exclusive preference given them, that is, because the bulk of the community are excluded from the traffic. The Constitution invests the King with the power of making war, to be used, like every prerogative, for the good of the people. It does not invest him with the power of raising money; or of deriving a profit from part of his subjects out of the war which he may be obliged to wage for the benefit of the whole. "This prohibition" (says the Lord C. J. Hale, discoursing of the King's power to lay embargoes on certain branches of trade, upon pressing occasions) "neither ought nor might be an engine

to gain money for licences; for if the proclamation had any strength, it was because of the exportation of these things. If it were not a public inconvenience, it could not be inhibited barely by a proclamation; and if it were a public inconvenience, it might not be licensed for private profit; if it might, the strength of the prohibition would consequently cease" (*De Port. Mar. Pt. II. C. 8.*) The practice, therefore, which has of late years crept in, is utterly repugnant to the constitutional law of England. But infinitely more so is the new step which the Crown has lately been advised to make, by prohibiting certain branches of trade, in our ports, not merely lawful during war, but highly beneficial to the country-branches of trade, to the benefits of which, the subject has an undoubted right—and then exacting money from individuals in whose favour the general prohibition is relaxed. If those impediments are only thrown in the way of this lawful and beneficial commerce to give Parliament an opportunity of taxing it; then does the crown, without any authority, commence a process of levying tribute as much contrary to law, as if it compelled the subject to deliver in accounts of his income, or comply with the whole regulations of a tax bill,

except the actual demand of money. Nay, the proceeding is still more illegal, in as much as the trader has a right to perform his voyage until the Parliament imposes duties; and by impeding him, the crown secures his eventually paying money, which otherwise he never could have been made to pay.

It might perhaps be thought, that sufficient violence had been offered to the most sacred principles of the Constitution, by the measures already exposed. But an act, if possible, still more daringly and directly illegal—an act in breach of the very letter of our written laws, has been added to the general infringements upon the rights of the subject. The men whose whole clamour was formerly raised against a Parliamentary interference with the Navigation Act, rendered absolutely necessary by the circumstances of the war, and only attempted with the formal, deliberate consent of the legislature, have presumed to issue, in the name of the Sovereign alone, during a prorogation of Parliament unnecessarily, unconstitutionally prolonged, a proclamation, ordaining the direct violation of that very Act of Navigation, in its most essential branch.

The Navigation Act, and the system of commercial legislation, of which it forms the chief

digest, (although it was by no means the origin of that system) has for its main object the encouragement of English shipping, and the exclusion of foreigners from the carrying trade, as far as any municipal laws can effect this purpose. The fundamental rule of the system then is, that a variety of foreign goods shall only be imported into England in English ships, or ships of the country where they are produced or manufactured. Towards the latter end of the last war, several acts were passed, giving the crown a power, for a limited time, (generally for about half a year) to suspend this rule of the navigation law, and permit neutrals to import from foreign countries, whether at peace or at war with us: thus, 39. Geo. III. c. 112. and 41. Geo. III. c. 19. This last expired six weeks after the beginning of the session 1801, and has never been renewed. But in August, 1803, an act was passed giving the crown the power to issue orders in council, permitting, during the present war, the importation of goods from enemy's ports in neutral vessels. (43 Geo. III. c. 153.—16.) No power, however, was given to permit such importation from friendly or neutral ports, and the reason was obvious.

The legislature intended only to relax the navigation law, where the circumstances of the war obliged them; and to allow the only intercourse which could be devised with the enemy; leaving all other trade under the monopoly of the British ship owner. The *Second Order* of November 11, is founded upon this statute, and although the preamble mis-states the law, the Order itself only give power to import from hostile countries. So far the mistake, is not very material, and the proceeding is sufficiently legal in substance, however slovenly in its form. But by the *First Order* of November 11, especially when coupled with the *Second additional Order*, November 25, although no permission whatever is given, or could be given, in any of the orders, to import from neutral or friendly ports in foreign vessels of a different country, yet the most express directions are issued for bringing into British ports, vessels so trading, and in certain cases, for entering and landing their whole cargoes. The *Second Order* of November 11, gives, indeed, the option to all neutrals warned into our ports, of importing their cargoes if they please, but adds, "under the conditions prescribed by law," and as the law positively prohibits the importation now in question, the most fa-

avorable interpretation of the clause is, to suppose that it is not meant to reach this case. If it is, the permission is utterly illegal, and whether it is intended to be given or not, the other orders compelling such importations to be made, are directly and grossly unlawful. The navigation law says, Americans shall not import goods from Prussia into England. The crown has no power by 43 Geo. III. c. 153, to suspend this law by any Order in Council. Yet Orders and Instructions are issued forcing all Americans laden with Prussian goods whithersoever they may be sailing, to come into some English port, to enter and land their cargoes. Upon this act of violent usurpation over the laws, which the crown has been advised to attempt, all further commentary is superfluous.

The illegality of the new system of Orders being quite manifest, a Bill of Indemnity will be necessary; and Parliament may then determine whether this illegal act is justified by any such urgency, in point of time, as prevented a delay until Parliament should assemble. In this view of the case, it may be worth while to remember that a further prorogation took place about a month after the first Orders were issued.

There are, indeed, various reasons for refusing such an Act of Indemnity as soon as the King's Ministers may apply for it. If a temporary pressure of circumstances had rendered some deviation from a particular law, or even some infringement upon the general spirit of the Constitution absolutely necessary, and Government had, *for the mean while*, and as if sensible of the illegality of their proceedings, issued orders upon the face of them temporary like the emergency; the Parliament in its justice might have granted them that indemnity which they respectfully asked. But here is a new system of Royal enactment—of executive legislation—a Privy council Code promulgated by some half dozen individuals (for as such only the law knows them) upon principles utterly repugnant to the whole theory and practice of the Constitution—a full grown Cabinet Statute book, not authorising any single and temporary proceeding, but prescribing general rules for a length of time; dispensing with the laws of the land in some points; adding to them in others; in not a few instances annulling them. It is an entire new Law-merchant for England during war, proclaimed by the court, not of Parliament, but of St. James's,

with as much regard to the competent authorities, or to the rightful laws of the realm, as the Rescripts of the latter Roman Emperor. It is not such a daring attempt as this that should be sanctioned by the Parliament, against whose authority it is levelled.

But the Ministers, should they obtain an Indemnity, may now come forward, and propose to carry their new system into effect by a regular act of the legislature. It will then be for Parliament to consider whether they can by one deed of theirs overthrow the most ancient and best established principles of the British Constitution. The statute may indeed have all the formalities of law—it may supply the solemnity which the illegal orders now want. But repugnant as it must be to the genuine spirit of our Government, men may perhaps look for the substance of the English law rather in those fundamental maxims of our jurisprudence which it will have supplanted. All the proofs formerly adduced to illustrate the unconstitutional nature of the late Orders, form in truth insurmountable objections to any measure which may be proposed for erecting them into laws, unless indeed some paramount and permanent reasons of expediency

can be urged, for enterprizing so mighty an innovation upon the constitution of the state. These reasons we shall now have occasion to discuss, in examining the policy of the new system.

III. *Are the late Orders in Council consistent with sound policy?*

The late Orders are so exceedingly confused, they deliver the regulations intended to be established with so little arrangement, and in some instances prescribe rules so manifestly contradictory to each other, that it is not very easy to collect from them the precise nature of the new system. As an example of direct contradictions may be cited the *Second order Nov. 11*, and the *Second order Nov. 25*. In the former, sugar, coffee, wine, brandy, snuff and tobacco, are mentioned as among the articles which neutrals may import into the United Kingdom from enemy's ports; but must re-export under certain regulations. The latter order lays down these regulations, but substitutes *cotton* for *tobacco*; so that it remained a doubt how tobacco could be re-exported, although it was still re-exportable: and then in the *Order Dec. 18*. a general prohibition of all imports, direct from

the enemy's colonies, is given under the form of an explanation of the former Orders. But since the navigation law prevents the importation of almost all foreign colony produce * in any except ships of the country producing; and since the 43 *Geo. III. c. 153*, on which these orders are founded, gives no power to the crown to suspend the navigation law, unless with respect to enemy's ports; it is clear that the *Order Dec. 18*, renouncing the use of this power in the present case, leaves the whole importation of the enemy's colonial produce rigorously prohibited, except cotton, indigo and cochineal, (as mentioned in the note below) which may still be carried from the hostile colonies to America, and from thence, brought in British ships, to this country. So that this last order, instead of explaining the clauses of the former Orders, relative to foreign sugar, coffee, snuff, tobacco, and cotton, reverses the permission given in those clauses to import and re-export under restrictions the four first articles, and

* With a few exceptions, viz. cochineal, (13 *Geo. I. c. 15*), Indigo, (7 *Geo. II. c. 18*), and cotton-wool, (5 *Geo. III. c. 32*), which may be imported from any place in British ships.

leaves it very doubtful whether the framers of the orders were aware that cotton is excepted from the provisions of the navigation law.

In the *Second order Nov. 25*, a contradiction in terms occurs, equally demonstrative of the crude, indigested form of these rules. A vessel arriving from whatever place with a cargo, the produce of a restricted country, must land it before it can re-export to any place; and a vessel arriving with any cargo whatever, formerly shipped in a restricted port, must land it before it can re-export to any place; except the cargo is the produce of an unrestricted country, and comes here directly from thence. This exception is downright nonsense, as applied to the rule. Taking its parts together, the order is—You must land French goods brought from America, and American goods brought from France, unless the goods are American, and brought directly from America. Such confusions as these make it difficult to obtain any correct view of the state in which the orders have left the neutral trade. But, as far as this can be made out, the following seems to be their purport.

All the ports, and coasts of the enemy, and of the countries under his controul

which have excluded British vessels, are placed in a place of *Restriction*, as to their trade with neutrals.—The nature of this restriction is as follows: All direct trade between the restricted ports and neutrals is prohibited: Neutrals can neither sail direct to, nor return direct from those ports; they must in both cases touch at a British port. If their cargo does not consist of flour, meal, or grain, and is either the produce of the restricted countries, or has been last shipped in a restricted place, or has been brought from a restricted place and is destined to a restricted place, it must be entered and landed before it can be re-exported. And cotton wheresoever it has been produced or shipped, or whithersoever it is going, must be always entered and landed before it can be re-exported *.—The vessels of foreign countries in *alliance* with England are allowed to sail *to* the restricted places direct; but must return *from* thence to British ports. Neither neutral nor allied vessels are permitted to sail to England from the enemy's colonies; but they may trade directly with those

* This seems to be the only sense that can be extracted from the clause of the Second Order, November 25, above commented upon.

colonies, both to and from ; and they may trade between those colonies and the Free ports of the English colonies. Brandy, wines, snuff, and tobacco from restricted countries (not being colonial produce) may be imported by neutrals in any manner ; but cannot be re-exported without licence ; and they are subject, like all other goods, to the above-mentioned regulations respecting entrance and landing.—The old rules regarding a state of *actual blockade* remain in full force.—The trade of Gibraltar and Malta with restricted places, by means of neutrals, is placed upon nearly the same footing with the trade of British ports ; only, that those places cannot re-export, except to a British port, any foreign goods, unless they were previously imported in British ships, or from a British port direct ; and cannot export cotton at all, except to a British port. Lastly, neutrals can only sail from Guernsey, Jersey, and Man, to the restricted countries with cargoes imported from British ports ; and can only re-export the cargoes which they bring from restricted countries, to British ports. Certificates of Origin forfeit the ship, on board of which they can be proved, by real evidence to have been ; and if a ship has ever been enemy's property it is likewise confiscated.

To illustrate the operation of this new system, let us take the example of an American vessel, and observe what she is allowed and forbidden to do. She may sail with an American cargo to England, and from thence to France, without landing her cargo, if it consist not of cotton or manufactured goods. From France she may return with a French or other restricted cargo which she must land, before she can carry it back to America. The chief exports of America are raw produce; therefore almost her whole trade with the restricted countries is limited by the necessity of touching at an English port twice, and landing the cargo once: if the American cargo consist of cotton, it must be landed in the outward voyage also, and can only proceed by licence.—The American may trade directly to and from the enemy's West India Islands; but cannot, (on account of the former law), bring their produce to this country: nor by the Orders can she carry it to the restricted European ports.—She cannot pursue her voyage to and from the north of Europe, by touching at Man, Guernsey, or Jersey, either going or coming; but besides touching there, she must touch at a British or Irish port. It is evident, then, that, unless for convenience of smuggling, and

evading the French decrees, no Americans will trade to Europe through Man, Guernsey, and Jersey.—The American cannot pursue her voyage to or from the south of Europe, by touching at Malta and Gibraltar; but must go first to a British or Irish port, and afterwards return thither.

This illustration comprehends the only material features of the new system, viz. its forcing all the neutral commerce to run through the ports of the United Kingdom; its giving the English Government a command of the supply of cotton, and some smaller articles, as brandies, wines, European snuff and tobacco; and its stopping the exportation of all enemy's West India produce, except cotton, cochineal, and Indigo, either to this Country or to any restricted part of Europe. It is upon these points that the policy of the measure must be tried.

Supposing, therefore, that the Americans remain neutral, and obey our orders in council, what do we gain? We do not destroy the enemy's trade, unless he chuses to enforce his decree against us; and in that case we destroy our whole trade at once, except only the trade with America and our allies—in other words, the same circumstances which enable us to destroy the trade of the restricted

countries, must destroy our whole foreign European commerce. Which party will suffer most by such an event? Surely the party which depends most on commerce—not France and Spain, of whose resources trade forms so trifling a part, and which have the whole internal commerce of the Continent secure from all our Orders of Council; but England, whose trade is the great support of her wealth, and which exists as a powerful nation by selling to and buying from the states of the Continent. Admitting that we can enforce our decrees most rigorously, Holland, France, Denmark, and Prussia, will no longer trade with each other by sea; nor with America and England at all. They will lose their trade with us, and retain their trade by land with each other; we shall at once lose our whole trade with each of them, and consequently suffer seven times more than any one of them. We shall retain our American trade; but that must be diminished in a great degree by the loss of her European trade which America will have sustained.—Surely the wit of man could not have invented a contest more favourable to the enemy than this. It is laying down our weapons and fighting him with his own; it is putting the dispute between us upon the very

ground which he must chuse; it is like a dwarf agreeing to strive with a giant, stand on the same level: it is as if we should consent to burn our whole navy, provided France burned all her's; whereby we should give up a thousand ships to deprive her of fifty.

But can we enforce even this bad bargain? France may with much greater certainty prevent ships from entering her ports than we can stop them on their voyage. She may cut off the trade from England to the Continent by means of neutrals; but we shall find it impossible to suspend all direct intercourse between those neutrals and the Continent. While, therefore, the part of the new system most hurtful to us is sure of being established if the enemy pleases, the prohibitions which we impose on his foreign trade cannot with equal certainty be enforced. We shall destroy his trade with ourselves, in order to cut off his direct trade with neutrals; but he will retain a part of this trade in spite of all we can do; and unless he feels it for his advantage will not trade with neutrals through us.

A strict and general blockade of the enemy's ports, is at least an intelligible and consistent measure. It cuts off his foreign

trade entirely, although it deprives us of our trade with him; and if commercial distress can ruin him, such a proceeding gives us some chance of effecting his downfall. But the new system is only a blockade of the enemy, if the enemy himself chuses that it shall be so. It can never, by possibility ruin him, or even materially injure his commerce: For the moment he is pinched, he can relieve himself. He can allow neutrals to enter his own ports, from those of Great Britain; and thus obtain as large a share of foreign commerce as he desires*. These neutral carriers, it is true, must land and re-ship in England certain cargoes; and many, (but not by any means all) of these voyages will be somewhat more circuitious than formerly. An American bound to Bordeaux, must touch at Cork, Falmouth, &c. which is somewhat out of her course; if bound to Dunkirk, Amsterdam, &c. she would probably touch at Cowes from choice, to receive advices respecting the market from London correspondents. Admitting that some considerable inconvenience arises from hence, in all cases on an average; the whole ef-

* It is confidently reported that some relaxation of the French Decree, has already been allowed in Holland, though this does not appear very likely.

fect is to raise the prices of the neutral goods a little to the enemy, and to lower somewhat the profits of the neutral, without any gain whatever to ourselves. Our friends and our enemies lose each a little, and we gain nothing at all. The obligation to land certain cargoes can do us no more real good. It increases somewhat the loss of the neutral and the enemy, and may enable us to keep a few more custom-house officers. If indeed, the orders in council are followed up by an act of Parliament, imposing duties on the goods so landed, then we clearly shall propose to ourselves, not certainly to distress the enemy's trade, but to profit both by his commerce and that of our friends. Would it not be a much simpler expedient, and answer the very same purpose, to propose that America should pay us a yearly tribute, and to raise it as she best can, either upon her own citizens, or her French customers? If the duty which we mean to lay on is not the merest trifle, we may be well assured that America will not submit to it.

It may be said that France left us no choice in this matter; that she began by interdicting all trade between England and the continent, through neutrals; and that had no Orders in Council been issued by us, we should still have

lost the trade Europe. This remark is, however, extremely incorrect. Had no measures on our part followed, there was little fear of the French decree being rigorously put in force. The neutrals would have found means of evading French regulations, as they have, according to our own statements, always contrived to elude the restrictions formerly imposed by England. The utmost rigour in the French ports, could only have forced the neutrals to make a circuitous voyage ; and "*certificates of origin*," so much censured by our own government, are perhaps of all the restrictions that ever were invented the most easily evaded.

The only part of the new system that looks consistent with itself, is the blockade of the enemy's West Indian colonies. By the first two sets of orders this was not effected. A provision was, on the contrary, made for bringing over their produce to this country ; and various regulations were prescribed for preventing, or at least impeding its re-exportation. Afterwards, however, the monstrous absurdity was perceived, of violently and suddenly increasing, a glut already ruinous of such produce in the home market ; and the Order of Dec. 18th, confined the exports of the enemy's islands to America. This measure is much more plain and consistent with bellige-

rent views than the rest of the plan ; but when examined, it appears equally short-sighted and unwise. The blockade of the enemy's colonies can only have two objects—to deprive the enemy of certain articles of consumption ; and to increase the demand for those articles in our own market. These objects, are, in a considerable degree, incompatible ; for our West India produce commonly finds a vent on the continent, by supplying the wants of the enemy. But supposing, for argument sake, that both the two ends may be gained at once, let us examine the consequences.

The French have borne every species of public and private calamity for nearly eighteen years ; they have passed through all the vicissitudes of revolution, from anarchy to despotism ; they have tasted only of war, with its whole train of evils, of which privations have been the smallest ; they have suffered the most unsparing conscription, augmented in rigour as the service of the army became more irksome and dangerous : to all this they have submitted in quiet, with rallying points for emigration in the neighbouring nations, and for rebellion in the heart of their own country. No dangers, no calamities, no private distresses, not even the conscription

itself, has ever extorted a murmur of discontent—and we now expect insurrections to break out as soon as coffee and sugar shall become scarce at Paris, or the army shall find tobacco growing dear ! The conscription is at an end, or is become only holiday work ; the armies go out not to fight but to revel in triumph, and to amuse themselves with foreign travel ; but grocery and snuff are advancing in price, and let Bonaparte look to it ! If he does not speedily make peace on our terms, restore the Bourbons, and give up Belgium, his earthly course is run !—This is the argument.

But if it be not a waste of time to give such positions as these a serious refutation, let us only consider how little chance any commercial blockade has of being effectually enforced. Every successful attempt of this kind which we make, augments incalculably the temptations to elude our vigilance. If certain drugs, for example, were almost excluded from France by the activity of our cruizers, their price would rise so enormously, that a neutral merchant would find his account in attempting to land a cargo of bark, (necessarily lowered in price elsewhere) though he should lose three fourths in the attempt ; so that we shall in vain

continue to wage war against the wretched hospitals of our enemy. To a certain degree the same remark applies in all the other cases.— In one way or another the goods will find their way from the places of glut, to those of demand. Their prices may be somewhat enhanced, and the use of such as are not essentially necessary, will be diminished.

All the changes of this sort, however, which we attempt to make, and to a certain degree successfully, will take place gradually. The stock in hand will be œconomized in proportion as the further supplies are obstructed, and instead of producing lasting discontents, or even disgust with the war, among our enemies, we cannot help furnishing the very remedy along with evil, by teaching them gradually to alter certain habits in themselves indifferent. It would not be so irrational for their rulers to expect that some hatred of England should arise out of this policy ; but for us who have not once excited the least disposition to throw off the French yoke by all our hostilities—who see the French people themselves, not merely unsubdued, but even flourishing after all our victories over their trade—for us to think of conquering by the scarcity of two or three wares, the people whom our greatest captains and innumerable ships have never humbled during years of the most successful naval warfare—surely exceeds

the bounds even of popular or party delusion.

It is supposed that the peculiar restraints imposed upon cotton, afford extraordinary satisfaction to the mercantile friends of the new system. These may operate either in lowering the price of the article at home; or in distressing the enemy for want of that which it is known he cannot find elsewhere. The former of these effects is surely no great advantage, in the present situation of West Indian affairs. The ruined state of the sugar planter makes it necessary that he should turn a large portion of his capital into other branches of cultivation; and of these cotton planting is on every account one of the best. The price for some time past has been on the decline; and such a glut as the orders in council must produce, is sure at once to injure those already occupied in cotton planting, and to prevent the sugar planters from adopting this mode of relieving their distresses. It would not be the wisest policy to compleat the ruin of the West-Indies, for the sake of alleviating the burthens which the war has brought on another class of the community. Besides that this class would probably soon experience a glut of manufactured goods, occasioned by the increased manufacture set agoing under the

violent operation of the new system, and the difficulty of exporting them—while on the return of peace, another change equally violent and sudden would drive part of the same manufacture into foreign countries.—To imagine that the orders will prevent raw cotton from reaching France, is very absurd: They do not even profess any such thing. If they did, the merchants of this country would be the first to pray that so enormous a load of cotton might be taken off their hands, and a chance afforded them of sending it to the continent.

So much for the blockade as it is to affect the enemy.—Now as to the relief of our West India body—it must be observed that cotton, cochineal, and indigo may still be imported through America, and every care is taken in the orders that the cotton once imported shall remain as a dead weight in the British market. But passing over this part of the regulations, what can our planters gain by the stoppage of French colonial trade, if at the same time France stops all imports of British West India produce into the continent? We grow more sugar in our own settlements by one half than we can consume at home. Can it be expected that all this quantity, or nearly the whole, will find its way

over in spite of the enemy's restraints upon our trade? Then, will no prizes be taken? Will no vessels attempting to elude our decrees be brought into British ports? The cargoes of these must be imported, and subjected both to the restrictions of our own Orders, and to the prohibitions of the enemy's Decrees. They will augment still farther the glut of the home market. Of those which try to escape our vigilance, some will succeed, and thus supplying in part the demand of the continent, diminish our chance of forcing the enemy to receive our produce. Now the trade of Brazil too will now be laid open, and all the sugar which used to supply Portugal, part of the Mediterranean, and even to find its way into the north of Europe, will now be brought direct to England. The smuggling between the enemy's colonies and Brazil will increase this quantity, in proportion as the interruption of the American trade with the enemy is effectually enforced; and it will be no easy matter to prevent such a contraband on coasts so extensive. Indeed, by the present orders, the whole produce of the enemy's islands may be carried first to North America and thence to Brazil, from whence, as there is no possibi-

lity of distinguishing it from Brazil produce, it must come to this country; and no conceivable restrictions can prevent this, unless we chuse to decree that our allies in Brazil shall have no trade with America, and none with ourselves, or the rest of Europe*.

Supposing, however, that these insuperable obstacles did not stand in the way of an immediate relief to the British planters, this relief can only be temporary; for the produce which we prevent the enemy's colonies from exporting, must be heaped up there, and come over to Europe, at a peace, to the final destruction of our planters. We allow them to receive supplies of provisions; we know that rather than throw sugar lands out of cultivation, planters will bear years of clear loss on their estates: can we expect then any other effect from the most compleat success of our plan, than a temporary rise of sugars, and a subsequent glut of the market increased

* By the strict letter of the Orders, hostile colonial produce may be carried through America, to the ports of allied powers in Europe, and from thence to the restricted countries; so that the blockade of the enemy's colonies is, strictly speaking, not at all enforced. But as this is the clear intent of the Order, December, 18, the question is argued as if some supplementary restrictions had been made.

in the same proportion, as soon as peace comes, or the blockade is raised? No measure could be devised more effectual for perpetuating the evils that now oppress the planters, and preventing them from applying the only possible remedy, viz. diminishing the cultivation of the great West Indian staples.

The interruption of the trade which the Americans carry on with the Spanish colonies is somewhat greater than may at first appear. They are not only prevented from importing more of the consumable produce of those settlements, than is sufficient for the home market: they are also, though indirectly, prevented from employing the greater part of the bullion which they obtain from thence. This bullion is carried by them to the East Indies and China, and purchases the manufactures of those countries, with which the Americans supply the greater part of Europe. The monopoly of our East India company prevents them from importing those goods into this country, and the Orders in Council, of course, neither do nor can permit such an importation. The Americans, therefore, can no longer supply the continent with India goods. But it is the sale of those goods

which enables them to pay for our commodities; so that by checking their carrying trade to the Spanish main and the East Indies, we in fact destroy a great part of our own market. The same operation, cannot fail to injure exceedingly our Asiatic possessions. While the company's monopoly prevents the capital of this country from finding its way thither, the Americans have, as a matter of necessity, not of choice, been allowed to supply its place, to the incalculable benefit of those fine settlements. Are the same men who cut off this necessary resource, prepared to throw open the East India trade? If not, (and surely no one would recommend such a step as a temporary expedient—a war measure adopted on the spur of the occasion) then the Orders in Council, here as every where else, though pointed against neutrals, and professing to aim at the enemy, in fact hit only ourselves.

In arguing this part of the question, care has purposely been taken to put the case as much as possible, on the plainest and narrowest views of national advantage, that no one might impute to the adversaries of the new system any disposition to refinement, or suppose that the proofs of its impolicy rested upon spe-

culative grounds. But more general reasons than those already advanced, are by no means wanting; and however contemptuously they may be received by the supporters of the *new* Code, they cannot fail to strike every enlightened statesman with additional conviction of its absurdity.

If America is in truth our best customer; if she possesses what we require, and wants what we have to export; if the market which she thus furnishes is not only beyond all others extensive, but must grow with the rapid growth of her resources, and continually accelerate the progress of our own; if from language, laws, government, the trade with her inhabitants is next to a home, or colonial commerce the most convenient and beneficial that we can carry on; if in short, America is, as it were, made for us, and we for her—can any but the veriest driveller in political science, doubt for a moment that her gains are our gains; that we are sufferers by her losses; that the less she trades with other nations, the less she will trade with ourselves; and that to confine her foreign commerce to her trade with England, would be to diminish, if not to destroy this trade also. Next to our own territory and that of our foreign settlements, were we as

wise, as we are brave, we should wish well to the American states. The ruin of the great home, and colonial market alone could injure us more than the ruin of the American commerce; and the impolicy of fettering that commerce, if it were practicable, would be exceeded only by the folly which all the maritime nations in Europe have sooner or later lamented—the folly of stunting, by monopolies, the traffic of their foreign settlements.

Hitherto it has been supposed that the Americans, (which in truth is as much as to say all neutrals, in the present state of things) would submit to our new Orders. But the more probable supposition is that they will at once refuse, and even if at first they should not quarrel with us, it can only be in the expectation of the restrictions never being enforced. Should they find us persisting in the execution of these oppressive decrees, levying tribute upon all their foreign trade, cutting off some of its most lucrative branches altogether, especially their round-about East India commerce, it is easy to perceive from their present temper of mind, how speedily they will go to war with us. And this last of all calamities to our commerce—our manufactures—our whole system at home and abroad, will be the result

of attempting to establish a code, already proved to be not only of no advantage to England, but positively detrimental to her best interests, in the most favorable light in which it can be viewed. That additional grounds of complaint may not be wanting, and examples of follies not necessarily connected with the new system, two regulations are introduced, one should think, for the express purpose of making a quarrel, and yet incapable of being enforced. If a neutral vessel, carrying a cargo not British, has a certificate of this fact on board, she is seized. The utter disregard of all justice is here as remarkable as the inefficacy of the Order. On the one hand it is no retaliation to the French decree; and, on the other, unless a neutral is taken very much by surprise indeed, she will have a care that no such "Certificate" nor any document referring to it is ever seen by our cruizers. The sale of enemy's ships to neutrals is likewise prohibited. Can we wonder if the Americans object to our forbidding that which we have ourselves so regularly done, that we have a standing act of Parliament to facilitate it? Or can we expect that we shall be able to detect by looking at a ship under American colours, the port in which she was built, and the date of her sale to the present possessors?

If any thing extraneous to this wretched experiment in commercial policy, could render it more worthy of our pity, it would be the peculiar time which has been chosen for the attempt. We may affect to talk of neutrals, and in arguing the question of right, the particular nation was a matter of indifference. But it is in vain that we shut our eyes when discussing the policy of the measure, to the alarming consideration that America is now the only nation to whom this appellation belongs. When the Orders were issued, Government knew well that in a few days our commerce with Russia and Austria would be at an end. The unfavorable dispositions of those powers must have been known to the Americans as soon as the Orders reached them. These Orders, therefore, are held up to America as an elaborate compilation of every injurious restriction which we can fancy, to lay upon her trade, as a studied system of determined hostility.—They must appear to be, as in reality they are, pointed against her alone. Is this likely to conciliate the powerful party in that country, who we know are averse to us; or is it likely to arm them with new arguments against our cause? Is this the way to reclaim such of our own friends as were driven to take the opposite side by an “*act of*

violence" "unauthorized," perhaps, but very tardily disavowed*? Is it by a policy like this that we can hope to retain even our own party, or to give their efforts weight with their countrymen? At the very moment that the orders were issued, their defenders tell us, the French had proceeded to new acts of violence against the American flag. Was it then like statesmen, or was it like the present Ministers, to run this race of aggression, and eagerly dispatch *our* violent decrees, least, if we delayed, the French might get the start of us, and the Americans quarrel with our enemies in preference to ourselves?

Unfortunately such infatuated notions are to be found out of the cabinet as well as in it. Hatred of America seems a prevailing sentiment in this country. Whether it be that they have no crown and nobility, and are on this account not quite a *genteel* power—or that their manners are less polished than our own—or that we grudge their independence, and hanker after our old monopoly of their trade—or that they closely resemble us in language, character, and laws—or, finally, that it is more our interest to live well with them than with any other nation in the world—the fact is undeniable, that the

* See Kings speech.

bulk of the people would fain be at war with them, and those who are a little wiser would never rest till they make them go to war with France. The former wish is plainly the worst of the two; but to desire that America should give up her neutrality is not a great deal wiser. How can she assist us or to use the modish phrase, make common cause with us, against France, half so effectually as by continuing to trade with both, while both are fighting together, and thus preserve our commerce, to whom commerce is so much more essential than to the enemy? There is, in truth, only one line of conduct, which America can adopt more hurtful to us, than that of taking part with us; and this is taking part with our enemy. If any measures of ours can ensure such a misfortune, the good people of these realms may rest satisfied that the late Orders in Council will answer the purpose.

And now that which has been said metaphorically is come to be very nearly matter of plain and sad reality—and we are *indeed* at war with the whole world. To make an exception of Sweden is surely drivelling; to comfort ourselves with the alliance of Brazil, is somewhat more excusable; but the consolation has not much more solidity. If the trade

with Brazil is even considerably extended, that of Portugal is gone, and we lose more than we gain upon the whole transaction. The very goods which the new empire furnishes, are, with a single exception, those which we want the least; and the traffic in the chief of them will be positively detrimental to us. The new court, too, may be on the whole well disposed to us; but our enemy, while he occupies Portugal, has unfortunately a stronger hold in their interests than we have in their affections; and may easily prevent us from making the most of the little good which the emigration, so *falsely** described both as to its causes and consequences, is capable of yielding us. Let us not deceive ourselves therefore. Our situation is perilous; and to despise the danger is not to brave it, but to destroy ourselves in the dark.

All this, indeed, is only an increase of former evils; and the natural progress of the favourite war system in this country. But there is *now* a circumstance in our situation, of a complexion so new and strange, that it may well appal us beyond all the ordinary evils that

* The contempt of good faith, which is now the favourite policy towards foreign states, has been also exhibited to the people of this country, in the late official accounts of the emigration, after a manner, quite disgraceful to the character of the nation.

surround us. Since the last session of Parliament we have indeed lost our allies ; and added four or five enemies to our list ; we have almost quarreled with our kinsmen in America, and are not without prospect of a civil war still nearer home. But all this astonished no one.—There remained one deed of shame to do, which should for ever blast our reputation in the face of the world ; and leave us not merely surrounded with dangers, and oppressed with misfortune, but deprived of courage to face the one, and fortitude to bear the other. Once we might have defied both to intimidate or subdue us. But we no longer have the boldness of a just and innocent nation.—“ Our conscience makes cowards of us.”—And “ a wounded spirit, who can bear ?”

Compared with this calamity, indeed, all that we have been contemplating in the foregoing pages sinks into nothing. But there is in many points a striking resemblance between the two cases ; and it requires but the eye of a cursory observer to trace in the contempt of all public justice, constitutional law, and sound policy, which marks the Orders in Council, the work of the same hands that sacrificed the British character at Copenhagen.

APPENDIX
OF
STATE PAPERS,
Statutes,
AND
AUTHORITIES.

APPENDIX.

No. I.

French Decree of November 21, 1806.

Article 1. The British Isles are declared in a state of blockade.

2. All trade and all correspondence with the British Isles are prohibited.

Consequently, all letters or packets that are addressed to England, or to Englishmen, or which are written in the English language, shall not henceforth be forwarded by post, but shall be seized.

3. Every individual English subject, of whatever rank or condition, who shall be found in any country occupied by our troops, or the troops of our allies, shall be considered as a prisoner of war.

4. Every magazine, every kind of merchandise, every species of property, be it what it may, which belongs to an English subject, shall be considered as lawful prize.

5. Trade in English merchandise is prohibited; and all merchandise that belongs to England, or that is the produce of her manufactures or colonies, is declared lawful prize.

6. A moiety of the produce of the confiscated property, which, by the foregoing articles, is declared lawful prize, shall be appropriated to the merchants, to indemnify them for the loss they have sustained

from the capture of their merchant vessels by English cruizers.

7. No ship which comes direct from England, or the English colonies, or which shall have been theirs, after the publication of the present decree, *shall be permitted to enter any of our harbours**.

8. Every ship trading by means of a false declaration, in contravention of the above-mentioned regulations, shall be detained, and the ship and lading shall be confiscated, as if they were English property.

9. Our Tribunal des Prises at Paris is invested with the power of definitively deciding all questions which may arise within our empire, or in the countries occupied by the French armies, in respect to the execution of our present decree. Our Tribunal des Prises at Milan is invested with the power of definitively deciding such questions as may arise within the limits of our kingdom of Italy.

10. The communication of the present decree shall be made by our Minister of Foreign Relations to the Kings of Spain, Naples, Holland, and Etruria, and to our other allies, whose subjects, are, as well as our own, the victims of the injustice and barbarism of the English maritime code.

11. Our ministers of foreign relations, war, marine, finance, and police, and our director general of the posts, are, in their respective departments charged with the execution of our present decree.

* This article gives no power whatever to seize, even ships entering French harbours from England direct; much less is seizure on the voyage authorized.

No. II.

*Translation of an Official Note from M. Decres,
the French Minister of Marine, to General Arm-
strong, envoy of the United States of America.*

Paris, 24th Oct. 1896.

I hasten to reply to the note which you did me the honour to communicate on the 20th of this month.

I am of opinion that the Imperial decree of Nov. 21, *does not* in its present shape alter the regulations now in force in France on the subject of neutral navigation, nor consequently affect the convention of Sept. 30, 1801, with the United States.

But although by this answer I have fully resolved the four questions submitted to me by your Excellency, I think I may add—1st. That as the declaration contained in the first article of the decree, Nov. 21, does not alter the present French code of maritime capture, it is unnecessary to examine what construction, restriction, or extension may be given to this article.—2. That capture, contrary to the existing laws, will not accrue to the benefit of the captors.—3. That an American vessel *cannot be taken at sea, merely because she is sailing to or returning from an English port*, and for this reason—that by the 7th article of the decree we can do no further in France than *merely exclude from our ports*, vessels coming from England or English colonies.—That as the regulations of articles 2 and 5 are in the nature of a

general law, they apply to foreigners domiciliated in France, or in countries occupied by the troops of his Majesty the Emperor and King ; but that it would be proper for your excellency to refer to the minister of exterior relations, as to that part which concerns the communication of citizens of the United States with England.

I beg your excellency to accept the assurance of my high consideration.

(Signed) DECRES.

To the Minister Plenipotentiary
of the United States.

No. III.

Order of Council of 7th Jan, 1807.

Whereas the French government has issued certain orders, which, in violation of the usages of war, purport to prohibit the commerce of all neutral nations with his Majesty's dominions, and also to prevent such nations from trading with any other country, in any articles the growth, produce, or manufacture of his Majesty's dominions :

And whereas the said government has also taken upon itself to declare all his Majesty's dominions to be in a state of blockade, at a time when the fleets of France and her allies are themselves confined within their own ports by the superior valour and discipline of the British navy :

And whereas such attempts on the part of the enemy would give to his Majesty an unquestionable right of retaliation, and would warrant his Majesty to retaliate

ing the same prohibition of all commerce with France, which that power vainly hopes to effect against the commerce of his Majesty's subjects; a prohibition which the superiority of his Majesty's naval forces might enable him to support, by actually investing the ports and coasts of the enemy with numerous squadrons and cruizers, so as to make the entrance or approach thereto manifestly dangerous.

And whereas his Majesty, though unwilling to follow the example of his enemies, by proceeding to an extremity so distressing to all nations not engaged in the war, and carrying on their accustomed trade, yet feels himself bound by a due regard to the just defence of the rights and interests of his people, not to suffer such measures to be taken by the enemy, without taking some steps on his part to restrain this violence, and to retort upon them the evils of their own injustice:

His Majesty is therefore pleased, by and with the advice of his privy council, to order, and it is hereby ordered, that no vessel shall be permitted to trade from one port to another, both which ports shall belong to or be in the possession of France or her allies, or shall be so far under their control as that British vessels may not freely trade thereat: And the commanders of his Majesty's ships of war and privateers shall be, and are hereby instructed to warn every neutral vessel coming from any such port, and destined to another such port, to discontinue her voyage, and not to proceed to any such port; and any vessel

after being so warned, or any vessel coming from any such port, after a reasonable time shall have been afforded for receiving information of this his Majesty's order, which shall be found proceeding to another such port, shall be captured and brought in, and, together with her cargo, shall be condemned as lawful prize. And his Majesty's principal secretaries of state, the lords commissioners of the admiralty, and the judges of the high court of admiralty and courts of vice-admiralty, are to take the necessary measures herein, as to them shall respectively appertain.

(Signed) W. FAWKENER.

No. IV.

French Decree, December 26, 1807.

Napoléon, emperor of the French, king of Italy, and protector of the Rhenish confederation :—*Observing the measures adopted by the British government, on the 11th of November last, by which vessels belonging to neutral, friendly, or even powers the allies of England, are made liable, not only to be searched by English cruizers, but to be compulsorily detained in England, and to have a tax laid on them of so much per cent. on the cargo, to be regulated by the British legislature—observing that by these acts the British government denationalizes ships of every nation in Europe, that it is not competent for any government to detract from its own independence and rights, all the sovereigns of Europe having of trust the sovereignties and independence of the flag ; that if by an un-*

pardonable weakness, and which, in the eyes of posterity, would be an indelible stain, such a tyranny was allowed to be established into principles, and consecrated by usage, the English would avail themselves of it to assert it as a right, as they have availed themselves of the tolerance of governments to establish the infamous principle, that the flag of a nation does not cover goods, and to give to their right of blockade an arbitrary extension, and which infringes on the sovereignty of every state; we have decreed and do decree as follows:

Art. 1. Every ship, to whatever nation it may belong, that shall have submitted to be searched by an English ship, or to a voyage to England, or that shall have paid any tax whatsoever to the English government, is thereby, and for that alone, declared to be denationalized, to have forfeited the protection of its king, and to have become English property.

2. Whether the ships thus denationalized by the arbitrary measures of the English government, enter into our ports, or those of our allies, or whether they fall into the hands of our ships of war, or of our privateers, they are declared to be good and lawful prizes.

3. The British islands are declared to be in a state of blockade, both by land and sea. Every ship of whatever nation, or whatsoever the nature of its cargo may be, that sails from the ports of England, or those of the English colonies, and of the countries occupied by English troops, and proceeding to England, or to the English colonies, or to countries occupied by English troops, is good and lawful prize, as contrary to the recent decree, and may be captured by our

ships of war, or our privateers, and adjudged to the captor.

4. These measures, which are resorted to only in just retaliation of the barbarous system adopted by England, which assimilates its legislation to that of Algiers, shall cease to have any effect with respect to all nations, who shall have the firmness to compel the English government to respect their flag. They shall continue to be rigorously in force as long as that government does not return to the principle of the law of nations, which regulates the relation of civilized states in a state of war. The provisions of the present decree shall be abrogated and null, in fact, as soon as the English abide again by the principles of the law of nations, which are also the principles of justice and honour.

All our ministers are charged with the execution of the present decree, which shall be inserted in the bulletin of the laws.

No. V.

Order of Council. 11th November 1807.

Whereas certain orders, establishing an unprecedented system of warfare against this kingdom, and aimed especially at the destruction of its commerce and resources, were some time since, issued by the government of France, by which "the British islands were declared to be in a state of blockade," thereby subjecting to capture and condemnation all

vessels with their cargoes, which should continue to trade with his Majesty's dominions.

And whereas by the same orders, "all trading in English merchandise is prohibited, and every article of merchandise belonging to England, or coming from her colonies, or of her manufactures, is declared lawful prize:"

And whereas the nations in alliance with France, and under her control, were required to give, and have given, and do give effect to such orders:

And whereas his Majesty's order of the 7th of January last, has not answered the desired purpose, either of compelling the enemy to recall those orders, or of inducing neutral nations to interpose with effect, to obtain their revocation, but, on the contrary, the same have been recently enforced with increasing rigour:

And whereas his Majesty, under these circumstances, finds himself compelled to take further measures for asserting and vindicating his just rights, and for supporting that maritime power, which the exertions and valour of his people have, under the blessing of Providence, enabled him to establish and maintain; and the maintenance of which is not more essential to the safety and prosperity of his Majesty's dominions, than it is to the protection of such states as still retain their independence, and to the general intercourse and happiness of mankind.

His Majesty is therefore pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, that all the ports and places of France and her allies, or of any other country at war with his Majesty, and all other ports or places in Europe, from

which, although not at war with his Majesty, the British flag is excluded, and all ports or places in the colonies belonging to his Majesty's enemies, shall, from henceforth, be subject to the same restrictions, in point of trade and navigation, with the exceptions herein-after mentioned, as if the same were actually blockaded by his Majesty's naval forces, in the most strict and rigorous manner,

And it is hereby further ordered and declared, that all trade in articles which are of the produce or manufacture of the said countries or colonies, shall be deemed and considered to be unlawful; and that every vessel trading from or to the said countries or colonies, together with all goods and merchandise on board, and all articles of the produce or manufacture of the said countries or colonies, shall be captured, and condemned as prize to the captors.

But although his Majesty would be fully justified, by the circumstances and considerations above recited, in establishing such system of restrictions with respect to all the countries and colonies of his enemies, without exception or qualification; yet his Majesty, being nevertheless desirous not to subject neutrals to any greater inconvenience, than is absolutely inseparable from the carrying into effect his Majesty's just determination to counteract the designs of his enemies, and to retort upon his enemies themselves the consequences of their own violence and injustice; and being yet willing to hope that it may be possible, consistently with that object, still to allow to neutrals the opportunity of furnishing themselves with colonial produce, for their own consumption

and supply; and even to leave open, for the present, such trade with his Majesty's enemies, as shall be carried on directly with the ports of his Majesty's dominions, or of his allies, in the manner herein-after mentioned: his Majesty is therefore pleased further to order, and it is hereby ordered, that nothing herein contained shall extend to subject to capture or condemnation any vessel, or the cargo of any vessel, belonging to any country not declared by this order, to be subjected to the restrictions incident to a state of blockade, which shall have cleared out with such cargo from some port or place of the country to which she belongs, either in Europe or America; or from some free port of his Majesty's colonies, under circumstances in which such trade from such free port is permitted, direct to some port or place in the colonies of his Majesty's enemies, or from those colonies direct to the country which such vessel belongs, or to some free port in his Majesty's colonies, in such cases, and with such articles as may be lawful to import into such free port:

Nor to any vessel, or the cargo of any vessel, belonging to any country not at war with his Majesty, which shall have cleared out from some port or place in this kingdom, or from Gibraltar or Malta, under such regulations as his Majesty may think fit to prescribe, or from any port belonging to his Majesty's allies, and shall be proceeding direct to the spot specified in her clearance:

Nor to any vessel, or the cargo of any vessel, belonging to any country not at war with his Majesty, which shall be coming from any port or place in Eu-

rope which is declared by this order to be subject to the restrictions incident to a state of blockade, destined to some port or place in Europe belonging to his Majesty, and which shall be on her voyage direct thereto:

But these exceptions are not to be understood as exempting from capture or confiscation any vessel or goods, which shall be liable thereto, in respect of having entered or departed from any port, or place actually blockaded, by his Majesty's squadrons or ships of war, or from being enemies' property, or for any other cause than the contravention of this present order.

And the commanders of his Majesty's ships of war and privateers, and other vessels acting under his Majesty's commission, shall be, and are hereby, instructed to warn every vessel which shall have commenced her voyage prior to any notice of this order, and shall be destined to any port of France, or of her allies, or of any other country at war with his Majesty, or to any port or place from which the British flag as aforesaid is excluded, or to any colony belonging to his Majesty's enemies, and which shall not have cleared out as is herein-before allowed, to discontinue her voyage, and proceed to some port or place in this kingdom, or to Gibraltar or Malta.

And any vessel which, after having been so warned, or after a reasonable time shall have been afforded for the arrival of information of this his Majesty's order at any port or place from which she sailed, or which after having notice of this order,

shall be found in the prosecution of any voyage contrary to the restrictions contained in this order, shall be captured, and together with her cargo, condemned as lawful prize to the captors.

And whereas countries, not engaged in the war, have acquiesced in the orders of France, prohibiting all trade in any articles the produce or manufacture of his Majesty's dominions; and the merchants of those countries have given countenance and effect to those prohibitions, by accepting from persons, styling themselves commercial agents of the enemy, resident at neutral ports, certain documents, termed "Certificates of Origin," being certificates obtained at the ports of shipment, declaring that the articles of the cargo are not of the produce or manufacture of his Majesty's dominions, or to that effect: And whereas this expedient has been directed by France, and submitted to by such merchants, as part of the new system of warfare directed against the trade of this kingdom, and as the most effectual instrument of accomplishing the same, and it is therefore essentially necessary to resist it:

His Majesty is therefore pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, that if any vessel, after reasonable time shall have been afforded for receiving notice of this his Majesty's order, at the port or place from which such vessel shall have cleared out, shall be found carrying any such certificate, or document as aforesaid, or any document referring, to or authenticating the same, such vessel shall

be adjudged lawful prize to the captor, together with the goods laden therein, belonging to the person or persons, by whom or on whose behalf, any such document was put on board.

And the Right Honourable the Lords Commissioners of his Majesty's Treasury, his Majesty's Principal Secretaries of State, the Lords Commissioners of the Admiralty, and the Judges of the High Courts of Admiralty and Courts of Vice-Admiralty, are to take the necessary measures herein, as to them shall respectively appertain.

WM. FAWKENER.

No. VI.

Second Order in Council, Nov. 11, 1807.

Whereas articles of the growth and manufacture of foreign countries cannot by law be imported into this country, except in British ships, or in ships belonging to the countries of which such articles are the growth and manufacture, without an order in council specially authorising the same.*

* The preamble mis-states the law completely. The Navigation Act does not prohibit *all* articles of foreign growth, &c. It only prohibits certain enumerated ar-

His majesty, taking into consideration the order of this day's date, respecting the trade to be carried on to and from the ports of the enemy, and deeming it expedient that any vessel belonging to any country in alliance, or at amity with his majesty, may be permitted to import into this country, articles of the produce or manufacture of countries at war with his majesty:

His majesty, by and with the advice of his privy council, is therefore pleased to order, and it is hereby ordered, that all goods, wares, and merchandises, specified and included in the schedule of an act, passed in the forty-third year of his present majesty's reign, intituled, "An act to repeal the duties of customs payable in Great Britain, and to grant other duties in lieu thereof," may be imported from any port or place belonging to any state not at amity with his majesty, in ships belonging to any state at amity with his majesty, subject to the payment of such

articles, as the produce of Muscovy and others. The power to suspend the navigation act, given during this war by the stat. 43 Geo. III. c. 153, enables his Majesty to suspend it only with respect to the trade carried on by foreigners between our ports and the enemy's ports. Indeed the enacting part of this second order, (if we must now apply to the proclamations of the crown, terms formerly reserved for acts of the legislature), only suspend the Navigation Act with respect to enemy's ports, and leaves the importation by neutrals of divers articles from restricted ports, not hostile, still utterly illegal, though imposed upon them by the first Order.

duties, and liable to such drawbacks as are now established by law upon the importation of the said goods, wares, or merchandize, in ships navigated according to law; and with respect to such of the said goods, wares, or merchandize, as are authorized to be warehoused under the provisions of an act, passed in the forty-third year of his present Majesty's reign, intitled, "An act for permitting certain goods imported into Great Britain, to be secured in warehouses without payment of duty," subject to all the regulations of the said last mentioned act; and with respect to all articles which are prohibited by law from being imported into this country it is ordered that the same shall be reported for exportation to any country in amity or alliance with his Majesty.

And his Majesty is further pleased, by and with the advice of his privy council, to order, and it is hereby ordered, That all vessels which shall arrive at any port of the united kingdom, or at Gibraltar or Malta, in consequence of having been warned pursuant to the aforesaid order, or in consequence of receiving information in any other manner, of the said order subsequent to their having taken on board any part of their cargoes, whether previous or subsequent to their sailing, shall be permitted to report their cargoes for exportation, and shall be allowed to proceed upon their voyages to their original ports of destination, (if not unlawful before the issuing of the said order,) or to any port at amity with his Majesty, upon receiving a certificate from the collector or comptroller of the customs at the port at which they shall enter, which certificate the said collectors

and comptrollers of the customs are hereby authorized and required to give,) setting forth that such vessels came into such port in consequence of being so warned, or of receiving such information as aforesaid; and that they were permitted to sail from such port under the regulations which his Majesty has been pleased to establish in respect to such vessels. But in case any vessel so arriving shall prefer to import her cargo, then such vessel shall be allowed to enter and import the same, upon such terms and conditions as the said cargo might have been imported upon, according to law, in case the said vessel had sailed after having received notice of the said order, and in conformity thereto.

And it is further ordered, that all vessels which shall arrive at any port of the united kingdom, or at Gibraltar, or Malta, in conformity and obedience to the said order, shall be allowed, in respect to all articles which may be on board the same, except sugar, coffee, wine, brandy, snuff, and tobacco, to clear out to any port whatever, to be specified in such clearance; and, with respect to the last-mentioned articles, to export the same to such ports, and under such conditions and regulations only, as his Majesty by any licence to be granted for that purpose, may direct.

And the right honourable the lords commissioners of his Majesty's treasury, his Majesty's principal secretaries of state, the lords commissioners of the admiralty, and the judges of the high court of admiralty and courts of vice-admiralty, are to take the necessary measures herein as to them may respectively appertain.

No. VII.

Third Order in Council, Nov. 11. 1807.

Whereas the sale of ships by a belligerent to a neutral is considered by France to be illegal:

And whereas a great part of the shipping of France and her allies has been protected from capture during the present hostilities, by transfers, or pretended transfers, to neutrals:

And whereas it is fully justifiable to adopt the same rule, in this respect, towards the enemy, which is applied by the enemy to this country.

His Majesty is pleased, by and with the advice of his privy council, to order, and it is hereby ordered, That in future the sale to a neutral of any vessel belonging to his Majesty's enemies, shall not be deemed to be legal, nor in any manner to transfer the property, nor to alter the character of such vessel: and all vessels now belonging, or which shall hereafter become the property of his Majesty's, notwithstanding any sale, or pretended sale to a neutral, after a reasonable time shall have elapsed for receiving information of this his Majesty's order at the place where such sale, or pretended sale, was effected, shall be captured and brought in, and shall be adjudged as lawful prize to the captors.

And the right honourable the lords commissioners of his Majesty's treasury, his majesty's principal secretaries of state, the lords commissioners of the

admiralty, and the judges of the high court of admiralty and courts of vice-admiralty, are to take the necessary measures herein as to them shall respectively appertain.

W. FAWKENER.

No. VIII.

Extract of Instructions to Commanders of Ships of War, November 18, 1807.

Our will and pleasure is, and we do hereby direct, by and with the advice of our Privy Council, that the commanders of our ships of war and privateers, do act in due conformity to, and execution of, our aforesaid order in council: And we do further order and declare, that nothing in the said order shall extend, or be construed to extend, to prevent any vessel, not belonging to a country declared to be under the restrictions of blockade as aforesaid, from carrying from any port or place of the country to which such vessel belongs, any articles of manufacture or produce whatever, not being enemy's property, to any port or place in this kingdom.

No. IX.

Additional Instruction to Cruizers, 26th Nov. 1807.

Our will and pleasure is, that vessels belonging to any state not at war with us, laden with cargoes in any ports of the united kingdom, and clearing out according to law, shall not be interrupted or molested

in proceeding to any part in Europe, (except ports specially notified to be in a state of strict and rigorous blockade before our order of the 11th of November instant, or which shall hereafter be so notified,) to whomsoever the goods laden on board such vessels may appear to belong: And we do further direct, that vessels belonging as aforesaid, coming from any port in Europe, (except as before excepted,) direct to any port of the united kingdom with goods for importation, shall not be interrupted in the said voyage, to whomsoever the goods laden on board the said vessels may appear to belong: And in case any vessel which shall be met with and asserted by her master to be so coming, shall be detained on suspicion of not being really destined to this kingdom; such vessel shall be brought to the most convenient port in the course of her asserted destination, and the captors are hereby required to inquire with all convenient speed into the alleged destination; and in case any vessel and goods so brought in and detained, shall be proceeded against in our High Court of Admiralty or in any courts of Vice-Admiralty, we hereby direct, that the same shall be forthwith restored upon satisfactory proof being made that the cargo was coming for importation to a port of this kingdom*.

By his Majesty's command,

HAWKESBURY.

* These instructions seem to be contrary to the navigation law. The courts are directed to restore neutral ships detained with cargoes from any restricted countries, on proof that they were coming for importation here. But

No. X.

First additional Order, 25th November, 1807.

Whereas it has been represented that it would be expedient to fix certain periods, at which it shall be deemed that a reasonable time shall have elapsed for receiving information, at different places, of his Majesty's order in council of the 11th of November instant, respecting the trade with his Majesty's enemies, and in their produce and manufactures; his Majesty taking the same into consideration, and being desirous to obviate any difficulties that may arise in respect thereto, and also to allow ample time for the said order being known to all persons, who may be affected thereby, is pleased, by and with the advice of his Privy Council, to order and declare, and it is hereby ordered and declared, that information of the said order of the 11th of November instant, shall be taken and held to have been received in the places herein-after mentioned, at the periods respectively assigned to them; namely,

Ports and places within the Baltic—December 21, 1807.

the Second Order of November 11, only authorizes the importation of goods by neutrals from belligerent ports, not from any other restricted ports; and, as we remarked before, the order would have been illegal by the Nav. Act, coupled with 43 Geo. III. c. 153 had it gone any farther. These instructions are therefore quite illegal.

Other ports and places to the northward of Amsterdam—December 11, 1807.

From Amsterdam to Ushant—December 4, 1807.

From Ushant to Cape Finisterre—December 8, 1807.

From Cape Finisterre to Gibraltar, inclusive, Dec. 13, 1807.

Maderia—December 13, 1807.

Ports and places within the Streights of Gibraltar to Sicily and Malta, and the west coast of Italy, inclusive, January 1, 1808.

All other ports and places in the Mediterranean beyond Sicily and Malta, January 20, 1808.

Ports and places beyond the Dardanelles—February 1, 1808.

Any part of the north and western coast of Africa, or the islands adjacent, except Maderia—January 11, 1808.

The United States, and British possessions in North America and the West Indies—January 20, 1808.

Cape of Good Hope, and the east coast of South America....March 1, 1808.

India....May 1, 1808.

China, and the coast of South America....June 1, 1808.

And every vessel sailing on or after those days, from those places respectively, shall be deemed and taken to have received notice of the aforesaid order.

And it is further ordered, that if any vessel shall sail within twenty days after the periods above assigned

respectively, from any of the said places, in contravention of the said order of the 11th of November instant, and shall be detained as prize on account thereof, or shall arrive at any port in this kingdom, destined to some port or place within the restriction of the said order, and proof shall be made to the satisfaction of the court of admiralty, that the said vessel shall be proceeded against, in case the same shall be brought in as a prize, that the *loading* of the said vessel commenced before the said periods, and before the information of the said order had actually been received at the port of shipment, the said vessel, together with the goods so laden, shall be restored to the owner or owners thereof, and shall be permitted to proceed on her voyage, in such manner, as if such vessel had sailed before the day so specified as aforesaid.

And it is further ordered, that no proof shall be admitted, or be gone into, for the purpose of shewing that information of the said order of the 11th of November instant had not been received at the said places respectively, at the several periods before assigned.

And the right honourable the lords commissioners of his Majesty's treasury, his Majesty's principal secretaries of state, the lords commissioners of the admiralty, and the judges of the high court of admiralty and courts of vice-admiralty, are to take the necessary measures herein as to them respectively appertain.

W, FAWKENER,



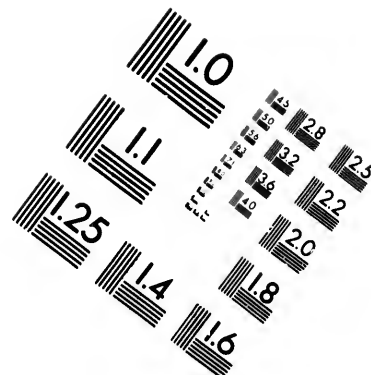
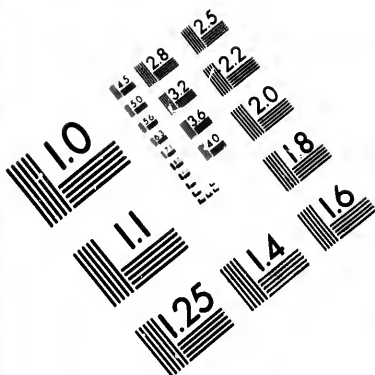
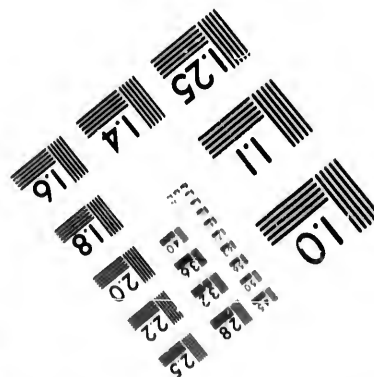
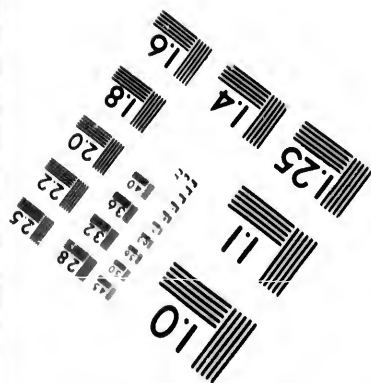
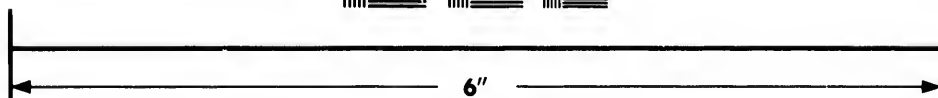
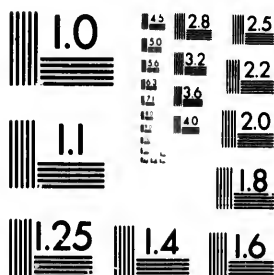


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No. XI.

Second additional Order, 25th November, 1807.

Whereas his Majesty, by his order in council, dated 11th November instant, respecting the trade to be carried on with his Majesty's enemies, was pleased to exempt from the restrictions of the said order, all vessels which shall have cleared out from any port or place in this kingdom, under such regulations as his Majesty may think fit to prescribe, and shall be proceeding direct to the ports specified in the respective clearances: His Majesty, taking into consideration the expediency of making such regulations, is pleased, by and with the advice of his privy council, to order, and it is hereby ordered,

That all vessels belonging to countries not at war with his Majesty, shall be permitted to lade, in any port of the united kingdom, any goods being the produce or manufacture of his Majesty's dominions, East India goods, or prize goods (all such goods having been lawfully imported) and to clear out with and freely to convey the same to any port or place in any colony in the West Indies, or America, belonging to his Majesty's enemies, such port or place not being in a state of actual blockade; subject to the payment of such duties as may at the time when any such vessels may be cleared out, be due by law on the exportation of any such goods, or in respect of the same being destined to the ports of the colonies belonging to his Majesty's enemies:

And likewise to lade, clear out with, and convey as aforesaid, any articles of foreign produce, or manufacture, which shall have been lawfully imported into this kingdom, provided his Majesty's licence shall have been previously obtained for so conveying such foreign produce or manufactures :

And it is further ordered, that any vessel belonging as aforesaid, shall be permitted to lade in any port of the united kingdom any goods, not being naval or military stores, which shall be of the growth, produce, or manufacture of this kingdom, or which shall have been lawfully imported, (save and except foreign sugar, coffee, wine, brandy, snuff, and cotton), and to clear out with, and freely to convey the same to any port, to be specified in the clearance, not being in a state of actual blockade, although the same shall be under the restrictions of the said order :

And likewise to lade, clear out, and convey foreign sugar, coffee, wine, brandy, snuff, and cotton, which shall have been lawfully imported, provided his Majesty's licence shall have been previously obtained for the exportation and conveyance thereof :

And it is hereby further ordered, that no vessel shall be permitted to clear out from any port or place in this kingdom, to any port or place of any country subjected to the restrictions of the said order, with any goods which shall have been laden, after notice of the said order, on board the vessel which shall have imported the same into this kingdom, without having first duly entered and landed the same in some port or place in this kingdom :

And that no vessel shall be permitted to clear out

from any port or place in this kingdom to any port or place whatever, with any goods the produce or manufacture of any country, subjected to the restrictions of the said order, which shall have been laden, after notice as aforesaid on board the vessel importing the same, without having so duly entered and landed the same :

Or, with any goods whatever which shall have been laden, after such notice, in the vessel importing the same, in any port or place of any country subjected to the restrictions of the said order, without having so duly entered, and landed the same, in some port or place in this kingdom :

Except the cargo shall consist wholly of flour, meal, grain, or any article or articles the produce of the soil of some country, which is not subjected to the restrictions of the said order, except cotton, and which shall have been imported in an unmanufactured state direct from such country into this kingdom, in a vessel belonging to the country from which such goods have been brought, and in which the same were grown and produced * :

And it is further ordered, that any vessel belonging to any country not at war with his Majesty, may clear out from Guernsey, Jersey, or Man, to any port or place under the restrictions of the said order, which shall be specified in the clearance, not being in a state of actual blockade, with such articles only, not being

* We have remarked in the text the contradictions here exhibited, as well as the repugnance of this Order to a subsequent one.

naval or military stores, as shall have been legally imported into such islands respectively, from any port or place in this kingdom direct.

And with respect to all such articles as may have been imported into the said islands respectively, from any port or place under the restrictions of the said order, it shall not be permitted to any vessel to clear out with the same from any of the said islands, except to some port or place in this kingdom.

And the Right Honourable the Lords Commissioners of his Majesty's Treasury, his Majesty's principal Secretaries of State, the Lords Commissioners of the Admiralty and the Judges of the High Court of Admiralty, and courts of Vice-Admiralty, are to take the necessary measures herein as to them shall respectively appertain.

W. FAWKENER.

No. XII.

Third Order, 25th November, 1807.

Whereas his Majesty, by his order in council dated the 11th of November instant, respecting the trade to be carried on with his Majesty's enemies, was pleased to exempt from the restrictions of the said order all vessels belonging to any country not at war with his Majesty, together with their cargo, which shall be coming from any port or place in Europe, which is declared in the said order to be subject to the restrictions incident to a state of blockade, direct to some part or place in Europe belonging to his Majesty:

And also all vessels which shall be cleared out from Gibraltar or Malta under such regulations as his Majesty may think fit to prescribe, and which shall be proceeding direct to the ports specified in their respective clearances :

And whereas it is expedient to encourage the trade from Gibraltar to Malta to countries under the restrictions of the said order, subject to regulations to be made respect thereto : His Majesty is therefore pleased to prescribe the following regulations in regard to *such trade*, accordingly, and by and with the advice of his privy council, to order, and it is hereby ordered,

That all sorts of flour and meal, and all sorts of grain, tobacco, and any other article in an unmanufactured state, being the growth and produce of any country *not being subjected by the said order to the restrictions incident to a state of blockade*, (except cotton, and naval and military stores) which shall have been imported into Gibraltar and Malta direct from the country where the same were grown and produced, shall, *without any licence*, be permitted to be cleared out to any port or place, not being in a state of actual blockade, without the same being compelled to be landed :

But neither the said article of cotton, however imported, nor any article which is not the growth, produce, or manufacture of this kingdom, or which has not been imported in a British ship, or from this kingdom direct (except fish), and which shall have been laden at the port of original shipment, after the period directed by an order of this date to be taken at

the time, at which notice of the said order of the 11th of November shall be considered as having been received at such port of shipment, shall be permitted to be exported from Gibraltar or Malta, except to some port or place in this kingdom:

And all other articles of the growth, produce, and manufacture of this kingdom, or which shall have been imported into Gibraltar or Malta, in a British ship, or from some port or place in this kingdom, together with the article of fish, however imported, may be exported to any ports or places in the Mediterranean or Portugal, *under such licence only as is herein-after directed to be granted by the governor and Malta respectively*—And it is hereby further ordered, that licences be granted by the governors, lieutenant governors, or other persons having the chief civil command at Gibraltar or at Malta respectively, but in his Majesty's name, to such person or persons as the said governors, lieutenant governors, or persons having the chief command shall think fit, allowing such person or persons to export from Gibraltar direct, to any port in the Mediterranean, or to any port of Portugal, or to any port of Spain without the Mediterranean, not further north than Cape Finisterre, and from Malta direct to any port being within the Mediterranean, with any articles of the produce or manufacture of his Majesty's dominions: And any articles which shall have been imported into Gibraltar or Malta from this kingdom, to whomsoever such articles shall appear to belong, (not being naval or military stores) in any vessel belonging to any country not at war with his Majesty, or in any vessel not

exceeding one hundred tuns burthen, and being unarmed, belonging to the country to which such vessel shall be cleared out and going :

And also to import in any such vessel or vessels as aforesaid, from any port within the Mediterranean, to Gibraltar or Malta, or from any port in Portugal or Spain as aforesaid, to Gibraltar, such port and such destination respectively to be specified in such licence, *any articles of merchandise whatsoever, and to whomsoever the same may appear to belong*, such articles to be specified in the bill of lading of such vessel, subject however to such further regulations and restrictions with respect to all or any of the said articles so to be imported, or exported, as may be inserted in the said licences by the governors, lieutenant governors, or other persons having the chief civil command at Gibraltar or Malta, for the time being respectively, as to them shall, from time to time, seem fit and expedient.

And it is further ordered, that in every such licence shall be inserted the names and residence of the person or persons, to whom it shall be granted, the articles and their quantities permitted to be exported, the name and description of the vessel, and of the master thereof, the port to which the vessel shall be allowed to go, which shall be some port not under actual blockade, and that no licence so to be granted shall continue in force for longer than two months from its date, nor for more than one voyage, or any such licence be granted, or acknowledged to be valid, if granted to permit the clearance of any vessel to any

port, which shall be actually blockaded by any naval force of his Majesty or of his allies :

And it is further ordered, that the commanders of his Majesty's ships of war and privateers, and all others whom it may concern, shall suffer every such vessel sailing conformably to the permission given by this order, or having any licence as aforesaid, to pass and repass, direct between Gibraltar, or Malta, and such port as shall be specified in the licence, in such manner, and under such terms, regulations, and restrictions as shall be expressed therein.

And it is further ordered, that, in case any vessel, so sailing as aforesaid, for which any such licence as aforesaid shall have been granted, and which shall be proceeding direct upon her said voyage, shall be detained and brought in for legal adjudication, such vessel, with her cargo, shall be forthwith released by the Court of Admiralty, in which proceedings shall be commenced, upon proof being made that the parties had duly conformed to the terms, regulations, and restrictions of the said licence ; the proof of such conformity to lie upon the person or persons claiming the benefit of this order, or obtaining or using such licence, or claiming the benefit thereof.

And it is hereby further ordered, that no vessel belonging to any state on the coast of Barbary, shall be prevented from sailing with any articles of the growth or produce of such state, from any port or place in such state, to any port or place in the Mediterranean, or Portugal, such port or place not being actually blockaded by some naval force belonging to his majes-

ty, or his allies, without being obliged to touch at Gibraltar or Malta.

And the Right Honourable the Lords Commissioners of his Majesty's Treasury, his Majesty's Principal Secretaries of State, the Lords Commissioners of the Admiralty, and the Judges of the High Court of Admiralty and Courts of Vice-Admiralty, are to take the necessary measures herein, as to them shall respectively appertain.

W. FAWKENER.

No. XIII.

Fourth Additional Order, Nov. 25, 1807.

Whereas his Majesty, by his order in council of the eleventh of November instant, was pleased to order and declare, that all trade in articles which are of the produce or manufacture of the countries and colonies mentioned in the said order, shall be deemed and considered to be unlawful (except as is therein excepted); his Majesty, by and with the advice of his privy council is pleased to order and declare, and it is hereby ordered and declared, that nothing in the said order contained shall extend to subject, to capture and confiscation *any articles of the produce and manufacture of the said countries and colonies laden on board British ships*, which would not have been subject to capture and confiscation if such order had not been made.

And the right honorable the lords commissioners of his Majesty's treasury, his Majesty's principal secretaries of state, the lords commissioners of the

admiralty, and the judges of the high court of admiralty and vice admiralty are to take the necessary measures herein, as to them may respectively appear.

W. FAWKENER,

No. XIV.

Fifth Additional Order in Council, 25th November 1807.

His Majesty taking into consideration the circumstances under which Prussia and Lubeck have been compelled to shut their ports against British ships and goods, is pleased, by and with the advice of his privy council, to order, and it is hereby ordered, that all ships and goods belonging to Prussia, which may have been seized subsequent to his Majesty's order, of the nineteenth of November one thousand eight hundred and six, and are now detained in the ports of this kingdom, or elsewhere, and all ships and goods belonging to inhabitants of Lubeck which are so detained, shall be restored upon being pronounced by the high court of admiralty, or any court of vice-admiralty, in which they have been or may be proceeded against, to belong to subjects and inhabitants of Prussia or Lubeck *, and not otherwise liable to confiscation; and that such ships and goods shall be permitted to proceed to any neutral port, or to the port to which they respectively belong: And it is further ordered, that the ships and goods belonging to

* On 20th December, 1807, Lubeck property was directed not to be restored till further orders.

Prussia or Lubeck shall not, until further orders, be liable to detention, provided such ships and goods shall be trading to or from any port of this kingdom, or between neutral port and neutral port, or from any port of his Majesty's allies, and proceeding direct to the port specified in their respective clearances.

And the right honourable the lords commissioners of his Majesty's treasury, his Majesty's principal secretaries of state, the lords commissioners of the admiralty, and the judges of the high court of admiralty and courts of vice admiralty, are to take the necessary measures herein, as to them shall respectively appertain.

W. FAWKENER.

No. XV.

Sixth Additional Order in Council, 25th November, 1807.

His Majesty having taken into consideration the circumstances under which Portugal has been compelled to shut her ports against the ships and goods of his Majesty's subjects, is pleased, by and with the advice of his privy council, to order, and it is hereby ordered, *that all ships and goods belonging to Portugal*, which have been, and are now detained in the ports of this kingdom, or elsewhere, shall be restored, upon being pronounced, by the high court of admiralty, or by the court of vice-admiralty, in which proceedings may have been, or shall be commenced, to

belong to subjects and inhabitants of Portugal, and not otherwise liable to confiscation ; and that the said ships and goods shall be permitted to proceed to any neutral port, or to Portugal : And it is further ordered, that the ships and goods belonging to Portugal shall not, until further orders, be liable to detention ; provided such ships and goods shall be trading to and from any port of this kingdom, or to and from Gibraltar or Malta, and proceeding direct to the port specified in their clearance, or between neutral port and neutral port, or between Portugal and the ports of her own colonies, or from any port of his Majesty's allies and proceeding direct to the ports specified in their respective clearances ; provided such ports shall not be at the time in a state of actual blockade : And it is further ordered, that the ships of Portugal shall not be considered as entitled, under any treaty between his Majesty and Portugal, to protect any goods laden therein which may be otherwise subject to confiscation.

And the right honorable the lords commissioners of his Majesty's treasury, his Majesty's principal secretaries of state, the lords commissioners of the admiralty ; and the judges of the high court of admiralty, and courts of vice-admiralty, are to take the necessary measures herein as to them shall respectively appertain.

W. FAWKENER

No. XVI.

Order of Council, Dec. 25, 1807.

His Majesty is pleased, by and with the advice of his privy council, to order, and it is hereby ordered, that nothing in his Majesty's order in council of the 11th of November last shall extend, or be construed to extend, to permit any vessel to import any articles of the produce or manufacture of the enemy's colonies in the West Indies, direct from such colonies to any port of this kingdom: And it is further ordered, that all vessels which may arrive in the ports of this kingdom direct from the colonies aforesaid, shall nevertheless be released, upon proof being made that the charter-party or other agreement for the voyage was entered into before notice of this order. And the right honourable the lords commissioners of his Majesty's treasury, his Majesty's principal secretaries of state, the lords commissioners of the admiralty, and the judges of the high court of admiralty, and the courts of vice admiralty, are to take the necessary measures herein, as to them shall respectively appertain.

W. FAWKENER.

No. XVII.

Lord Coke's Commentary on

MAGNA CHARTA.

That before this statute, merchant-strangers might be publicely prohibited, publice prohibeantur. And this prohibition is intendable of merchant strangers in amitie, for this act provideth afterward for merchant strangers enemies; and therefore the prohibition intended by this act, must be by the common or publique councill of the realme, that is, by act of parliament, for that it concerneth the whole realme, and is implied by this word (publice,)

Now touching merchant strangers, whose sovereign is in warre with the King of England.

There is an exception, and provision for such, as be found in the realme at the beginning of the warre, they shall be attached with a priviledge, and limitation, viz. without harme of body, or goods, with this limitation, untill it be knowne to us, or our chiefe justice (that is our guardien, or keeper of the realme in our absence) how our merchants there in the land in warre with us shall be intreated, and if our merchants be well intreated there, theirs shall be likewise with us, and this is jus belli. Et in republica maximo conservanda sunt juri belli.

But for such merchant strangers as come into the realme after the warre beginne, they may be dealt withall as open enemies: and yet of auncient time three men had priviledge granted them in time of

warre. Clericus, agricola, et mercator, tempore belli. Ut oretq; colat, commutet, pace fruuntur.

The end of this chapter was for advancement of trade, and traffique; the meanes for the well using and intreating of merchant strangers in all the particulars aforesaid, is a matter of great moment, as appeareth by many other acts of parliament, for as they be used here, so our merchants shall be dealt withall in other countries.

King Philip and Queen Mary, graunted by letters patents to the mayor, bayliffes, and burgesses of Southampton, and their successors, that no wines called malmeseys to be imported into this realme by any denizen, or alien, should be discharged or landed at any other place within this realme, but onely at the said town and port of Southampton, with a prohibition, that none should doe to the contrary upon pain to pay treble custome to the King and queen, &c. And for that Anthony Donate, Thomas Frederice, and other merchant strangers bought divers butts of malmesey, &c. and landed them at Goore, and in Kent, Gilbert Gerard the attourney generall, informed in the exchequer, against the said merchant strangers for the said treble custome, &c. Upon which information, as to the said treble custome, the said Anthony Donat demurred in law, &c. And this case was argued in the exchequer chamber by counsell learned on both sides, and upon conference had, two points were resolved by all the judges. 1. That the grant made in restraint of landing of the said wines was a restraint of the liberty of the subject, against the lawes and statutes of the realme. 2. That

the assessment of treble custome was merely void, and against the law. As it appeareth by the report of the lord Dier under his hand (which I have in my custody) But after by act of parliament, in anno 5 Eliz. the said charter is established as to merchant strangers onely, but not against subjects. (ii. Inst. 57.)

No. XVIII.

Magna Charta. (9 Hen. III. cap. 30.)

Omnes mercatores nisi publice antea prohibiti fuerint habeant saluum & securum conductum exire de Angl. & venire in Angl. & morari & ire per Angl. tam per terram quam per aquam ad emend. & vendend. sine omnibus tollis malis per antiquas & rectas consuetudines preterquam in tempore guerre & si sint de terra contra nos guerrina & talis inueniantur in terra nostra in principio guerre attachientur sine damno corporum vel rerum donec sciatur a nobis vel a capitali Justic. nostro quomodo Mercatores terre nostre tractantur qui tunc inueniuntur in terra illa contra nos quirrina & si nostri salvi sint in terra nostra.

No. XIX.

9 Ed. III. stat. 1. cap. 1. § 1 and 2.

That all merchant strangers, and denizens, and all other and every of them, of what condition or state soever they be, that will buy or sell corn, wines, aver

de pois, flesh, fish, and all other livings and victuals, wools, clothes, wares, merchandizes, and all other, things vendible, from whence soever they come, by foreigners or denizens, at what place soever it be, city, borough, town, port of the sea, fair, market, or elsewhere, within the realm, within franchise or without, may freely, without interruption sell them to what persons it shall please them, as well to foreigners as denizens; except always the enemies of our Lord the King and his realm. And if haply any disturbance be done to any merchant stranger, or denizen, or any other, for the sale of such things, in any city, borough, town, port of the sea, or other place which hath franchise, and the mayors and bailiffs, or other which hath the rule of such franchise, being required by the said merchants, or other thereof to provide remedy, and do not and be thereof attained, the franchise shall be seized into the king's hands, &c.

No. XX.

14 *Ed. III. Stat. 2. cap. 2. § 2.*

That all merchants, denizens, and foreigners, (except those which be of our enmity) may without let safely come into the said realm of England with their goods and merchandizes, and safely tarry and safely return, paying the customs subsidies and other profits reasonably thereof due; so always that franchises and free customs, reasonably granted by us and our an-

restors to the city of London, and other cities, boroughs, and good towns of our realm of England, be to them saved.

No. XXI.

18. Ed. III. stat. 2. c. 3. § 2.

And that every man, as well stranger as privy ; from henceforth may buy wools, according as they may agree with the seller, as they were wont to do before the said ordinances ; and *that the sea be open to all manner of merchants to pass with their merchandise where it shall please them, (qe la mieer soit overte a tout manere des marchantz de passer over lour marchandises.)*

No. XXII.

25 Ed. III. stat. 4. c. § 4.

That every merchant or other, of what condition he be, as well alien as denizen, that bring wines, flesh, fish, or other victuals, cloths, woolfels, *Avoir de pois*, or any other manner of merchandizes, or chaffer to the city of London, or other cities, boroughs, and good towns of England, or ports of the sea, may freely and without challenge or impeachment of any, sell in gross or at retail, or by parcels at his will, to all man-

ner of people that will buy the same, notwithstanding any franchises, grants, or custom used, or any other things done to the contrary; sithence that such usages and franchises be to the common prejudice of the king and his people.

No. XXIII.

27 Ed. III. stat. 2. cap. 2.

Item pur replener lez ditz Roialmes et terres de monei et de plat dor et dargent et dez merchandizes dez autres terres, et pur doner tarlent as marchauntez estraunges de venir ove lez merceez et marchandises de autres terres en lez Roialme & terres avaunt ditz. Si avoins ordeigne & establi, que tous lez marchaunte estrunges, queux ne sount myc de notre enmite, de quel terre ou nation qils soient puissent soutz nostre protection, et save conduit venter et demurrer en nos dit Roialme et terrez, queux parties, qils voudrout, et de illocqs retourner ove leur mesnee merces et marchandises quecunqes fraunchement et vendre leur marchandises a lez estaples & aillours deinz mesme le Roialme & terres, a que lez voudra achater paiauntes les custumes ent deuz. Et pur plus assurere lez marchauntz estraunges et autres mesnauntes liens & marchandises es dites Roialme et terres; si voloins & grauntoms ordeinoms.

TRANSLATION.

Item, for the better replenishing of these realms with money, gold and silver plate, and merchandize of foreign countries, and for giving to merchant strangers inducements to come with the wares and merchandize of foreign countries into these realms aforesaid—We have ordained and established *that all merchant strangers who are not at enmity with us of what country or nation whatsoever*, may under our protection and safe conduct come and tarry in our realms aforesaid, wheresoever they chuse, and from thence may return with their imported wares and merchandize freely, and sell the same at the staples and elsewhere, &c.

No. XXIV,

2d Rich. II. stat. 1. c. 1. § 4.

Our Lord the King considering clearly the coming of merchant strangers within the realm, to be very profitable for many causes, to all the realm, by the assent of the prelates, dukes, earls, barons, and of the commons of the realm, hath ordained and stablished, that all merchants aliens, of what realms, countries, or seignories that they come, which be of the amity of the King, and of his realm, may from

henceforth safely and surely come within the realm of England, and in all cities, boroughs, ports of the sea, fairs, markets, or other places within the realm, within franchise and without, and abide with their goods and all merchandizes under the safeguard and protection of the king, as long as shall please him, without disturbance or denying of any person.*

No. XXV.

4 Ric. II. st. 2. c. 1. s. 1 and 2.

That all manner of merchant strangers, of whatsoever nation or country they be, being of the amity of the King and of his realme, shall be welcome, and freely may come within the realm of England, and

* The three last statutes completely prove that the exception in some of the former ones "*of the kings enemies*" means either rebels and foes within the realm, or is to be interpreted as shewing who are *not* to come and sell here—not as prohibiting merchant strangers at amity from selling to all—foes as well as friends.—Even if it were pretended that those statutes meant to prohibit the trade of alien friends with alien enemies, it would remain for the defenders of the late Orders to shew that *all* the restricted countries are those of alien enemies, or to admit that at least in part those orders are quite illegal. But no such interpretation can be set up, nor is it supported by a single law authority.—See 6 Comyns, 352.—2 Inst. 57.—Bac. Ab. Merchant.

elsewhere within the King's power, as well within franchise as without, and there to be conversant to merchandize, and tarry as long as them liketh, as those whom our said lord the King by the tenor hereof, taketh under his protection and safeguard, with their goods, merchandizes, and all manner familiars. And for so much the King willeth and commandeth, That they and every of them be well, friendly, and merchantlike entreated and demeaned within all parts within his said realm and power, with their merchandizes, and all manner goods, and suffered to go and come, and into their proper country peaceably to return without disturbance or impeachment of any.

No. XXVI.

5 Hen. IV. cap. 7. s. 1.

Item, It is ordained and established, that all the merchant strangers, of what estate or condition that they be, coming, dwelling, or repairing within the realm of England, shall be entreated or demeaned within the realm in the manner, form, and condition, as the merchants denizens be, or shall be entreated or demeaned in the parts beyond the sea.

No. XXVII.

Extract from Lord C. J. Hales Treatise De Portibus Maris."

For general prohibitions of merchandizes of any particular kind. These were sometimes made, but very rarely; neither indeed could they be lawful without the help of an act of parliament, because there have been in all times several statutes made for the liberty and encouragement of merchant strangers especially to come into the kingdom and trade, which could not be derogated by a proclamation. And therefore, if at any time there were such inhibitions by proclamation, they were commonly temporary upon an exigence of state, and not perpetual, nor of any certain continuance. But when there were perpetual or long restraints of this nature, they were always done by parliament.

And the reasons of these interposings of acts of parliament was, because that proclamations proved very ineffectual to that purpose, partly because it was at best doubtfull whether they could at all be effectual against so manie acts of parliament; but doubtless they could not without an act of parliament induce a forfeiture of the goods so imported, as hath been often resolved; whereof more hereafter.

Concerning exportations, and how far forth the ports may be shut in reference to goods and merchandize exported.

Those inhibitions were for the most part touching such commodities whereby the kingdom might be weakened, or scarcity occasioned, by the exportation: as arms, ammunition, corn, victuals, gold, silver,

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horses, timber, thread of yarn, of woollen, and sometimes of falcons.

And sometimes in the proclamation there was annexed a clause of imprisonment of offenders; sometimes the forfeiture of the things imported; sometimes the forfeiture of all their goods and lands. But these clauses of forfeiture were only *in terrorem*: for, as we have before observed, a proclamation barely cannot induce a forfeiture of goods.

Though possibly in the time of hostility or public danger, or common scarcity, such prohibitions by proclamation of exportation of victuals and arms might have a temporary effect and use; yet we may easily guess that they were not effectual for perpetuity, nor indeed sufficient provisions *pro tempore*; for the king and his council thought not fit to rest upon such ineffectual means, but acts of parliament have successively passed for the inhibition of exportation of these very things with penalties of forfeitures added to them. See 1 E. 4. c. 5. for horses 1 E. 2. P. M. c. 5. of corn, herring, butter, cheese, and wood; 25 H. 8. c. 5. of victuals of all sorts; 9 E. 3. c. 1. 19 H. 7. c. 15. of bullion or money. The like might be instanced in divers other things.

The restraints of exportation in any but English bottoms. This hath been attempted to be done by proclamation, as a good expedient for the increase of shipping and mariners, and the encouragement of trade and navigation. Vide *inde claus.* 41 E. 3. m. 25. of a proclamation to that purpose; but it proved ineffectual, till provision was made for it by acts of

parliament, viz. 5 R. 2. c. 3.—6 R. 2. c. 8.—14 R. 2. c.—4 H. 7. c. 10. But because it provoked foreign princes to do the like, it was repealed by the statute 1 Eliz. c. 13. with certain provisions made in the case by that statute and the statutes of 5 Eliz. c. 5. and 13 Eliz. c. 15. But now by a late act of parliament, 12 Car. 2. entitled, “An act for encouraging of navigation,” the use of foreign ships is in a great measure restrained.

And upon the whole matter it will appear from the several acts of parliament that have been made for the support and increase of trade, and for the keeping of the sea open to foreign and English merchants and merchandise, that there is now no other means for the restraint of exportation or importation of goods and merchandises in times of peace, but only when and where an act of parliament puts any restraint. Several acts of parliament having provided *que la mere soit overt*, it may not be regularly shut against the merchandise of English, or foreigners in amity with this crown, unless an act of parliament shut it out, as it hath been done in some particular cases, and may be done in others.

(*De Port. Mar. Pt. II. Cap. 8.*)

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